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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 552.

THE UNITED STATES, PLAINTIFF IN ERROR,

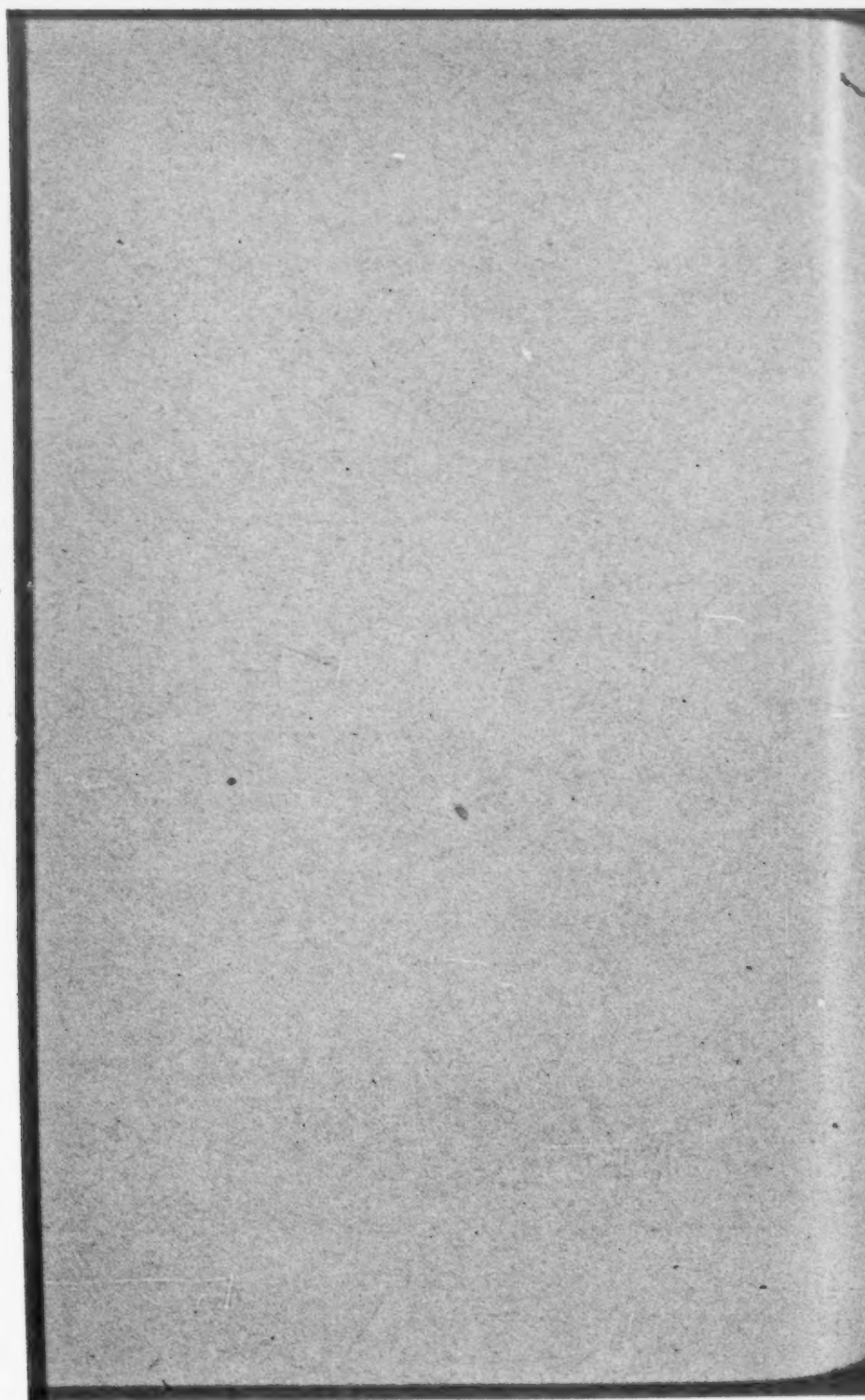
VS.

ERIE RAILROAD COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 3, 1914.

(24296)



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vs.

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1 THE UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of New York, in the Second Circuit, before you or some of you, between the United States of America and the Erie Railroad Company, a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days of the date hereof; that the record and proceedings aforesaid being accepted, the said Supreme Court may cause further to be done therein to correct that error, what by right and according to the laws and customs of the United States should be done.

2 Witness, the honorable Edward D. White, Chief Justice of the United States, the 16 day of June, in the year of our Lord one thousand nine hundred and fourteen.

ALEX. GILCHRIST, JR.,
*Clerk U. S. District Court for the
Southern District of New York.*

The foregoing writ is hereby allowed.

LEARNED HAND,
*United States District Judge for the
Southern District of New York.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alex. Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, to hereby certify, that the following pages numbered from four to eighty-five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case entitled "The United States of America, Plaintiff in Error, vs. Erie Railroad Company, Defendant in Error," as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 30th day of June, in

the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

[SEAL.]

ALEX. GILCHRIST, Jr., *Clerk.*

3 (Indorsed on back:) C-7-40. U. S. District Court, Southern District of New York. The United States of America versus Erie Railroad Company. Writ of error. H. Snowden Marshall, United States attorney, attorney for U. S. A. Due service of a copy of the within is hereby admitted. New York, June 17, 1914. Rush Taggart, attorney for deft. To Rush Taggart, Esq., attorney for deft, 195 Broadway, New York, N. Y. District Court. Filed Jun. 17, 1914. S. D. of N. Y.

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Indictment.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday in June, in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 2nd day of June, in the year of our Lord one thousand nine hundred and fourteen.

Southern District of New York, ss: The grand jurors of the United States of America, within and for the district aforesaid, on their oath present, that on the twenty-seventh day of June, 1912, the Erie Railroad Company was a corporation duly organized and existing under and by virtue of the laws of the State of New York. Said Erie Railroad Company owns and operates a line of railroad extending from Jersey City, New Jersey, northwesterly through the States of New Jersey, New York, Pennsylvania, and Ohio, to the city of Dayton, Ohio, with branches radiating to other points in the said several States, and has operated such lines of railroad, as a common carrier of freight and passengers and as a carrier of the United States mails for many years; and said railroad extends into District of New York. That the United States mail was on the said Southern District of New York, to the village of Montgomery, in said county and State, and it maintains a railway station in the said village of Montgomery for the performance of its business there,

5 and said Erie Railroad Company during the year 1912 was the owner of certain railway cars, which regularly performed trips at stated periods, to wit, several times daily, from the said city of Jersey City, in the State of New Jersey, to the said village of Montgomery, in the county of Orange and the State and Southern District of New York. That the United States mail was on the said day and for some years prior thereto had been regularly carried between the said city of Jersey City and the said village of Montgomery.

And the jurors aforesaid, on their oath aforesaid, do further present that for many years it has been, and still is, considered by railroad men that a necessary instrumentality in the successful and safe operation of railroads is a line of telegraph situated along and upon the right of way of the railroad, with wires connecting with practically all of the cities and villages along and upon said railroad in order that information and orders may be transmitted thereby from the central offices from which the movement of trains is controlled to railroad offices situated in the various railway stations along the lines; that in all these offices are telegraph operators by and through whom the information and orders transmitted and also communicated to the conductors and engineers in charge of the trains moving along and upon the said railroad; that the maintenance and operation of such a line of telegraph involves a large expense if operated exclusively by the railroad company for railroad purposes.

And the jurors aforesaid, on their oath aforesaid, do further present that the Western Union Telegraph Company is a corporation, organized under the laws of the State of New York, and is engaged in operating a system of telegraph lines for the transmission of messages for the Government of the United States and for the general public, radiating from its main office in the city of New York to all parts of the United States and connecting with cables to foreign countries; that for the purpose of creating as nearly a universal system of telegraph as practicable it is necessary that offices be established not only in the large cities, but also in the smaller towns and villages throughout the State of New York and the other States of the Union; that in most of these smaller towns and villages the telegraph business is not sufficient to meet the expense of maintaining such offices if the same should be maintained by the Western Union Telegraph Company alone; that this was early discovered in the development of the telegraph system, and in the interest of economy, therefore, and in order to make the telegraph system as nearly universal as possible, railroad companies and telegraph companies have, for many years, maintained joint telegraph lines situated along and upon the rights of way of the railroad companies, and have used such lines in common; that such an agreement was entered into between the said Erie Railroad Company and the said Western Union Telegraph Company on September 25, 1907, and is still in full force and effect, and a copy of said agreement between the said Erie Railroad Company and the said Western Union Telegraph Company is attached to this indictment and is made a part hereof with the same force and effect as though it were recited at length in said indictment.

That at the village of Montgomery aforesaid the said Erie Railroad Company maintained on June 27, 1912, a railroad station and office for the sale of tickets and the receipt of freight, and a telegraph office with one G. A. Osborne in charge as its agent and telegraph operator; that the Western Union Telegraph Company

also maintained in the said village at the same time and in the said railway station and office of the Erie Railroad Company an office for the receipt, delivery, and transmission of telegraph messages under the provisions of said contract, with the said Osborne in charge thereof as its agent.

That in accordance with the provisions of the said contract the Western Union Telegraph Company had, some years prior to June 27, 1912, constructed, and on that day maintained and operated, along the right of way of the Erie Railroad Company two wires leading into the office at Montgomery aforesaid, one of which wires were set apart for the business of the railroad company and the balance of which was used for the business of the telegraph company; that the said office was equipped and maintained and in accordance with the provisions of the said contract and for some years had been operated and maintained as above stated. That the said Osborne received a salary, which was paid to him by the Erie Railroad Company, and no part of which was paid, either directly or indirectly, by the Western Union Telegraph Company; that in accordance with the provisions of the said contract one E. P. Griffith had been duly appointed as joint superintendent of telegraph and was acting as such joint superintendent of telegraph on June 27th, 1912; that the said Erie Railroad Company on the said twenty-seventh day of June, 1912, carried otherwise than in the said United States mail, to wit, in what is known as the railway or train mail, in one of its railway cars, a letter from E. P. Griffith, who was then and there joint superintendent of telegraph of the said Erie Railroad

Company and the Western Union Telegraph Company, to G. A. Osborne, who was then and there the agent of the said Erie Railroad Company at Montgomery aforesaid, and also telegraph operator of the Western Union Telegraph Company at Montgomery aforesaid, of which the following is a copy:

"JUNE 27, 1912.

"MR. G. A. OSBORNE,

"Agent Erie Railroad and Manager W. U. T. Co.,

"Montgomery, N. Y.

"DEAR SIR: The revenue of the W. U. T. Co.'s receipts at Montgomery, N. Y., would indicate that the new telegraph service, such as day and night letters, had not been thoroughly presented to the people of Montgomery. At many of the Erie Railroad stations similar to Montgomery very handsome increases in telegraph receipts have been shown on account of this new service and as the Erie Railroad participates in the telegraph revenue from its railroad stations it is desired that their revenue from the telegraph company shall increase as well as the revenue from its freight and passenger traffic, and I hope you will do everything to make such showing.

"Yours, truly,

"(Sd.)

E. P. GRIFFITH,

"Supt. of Telgh."

That the said letter did not relate to any part of the cargo in the said railway car, or in the train of which the said railway car was a part, or to the current business of the said Erie Railroad Company, or to any article carried at the same time by the same railway, or by the train of which the said railway car was a part; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 184 U. S. C. C.)

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SECOND COUNT.

And the jurors aforesaid, on their oaths aforesaid, do further present, that on the twenty-seventh day of June, 1912, the Erie Railroad Company was a corporation duly organized and existing under and by virtue of the laws of the State of New York. Said Erie Railroad Company owns and operates a line of railroad extending from Jersey City, New Jersey, northwesterly through the States of New Jersey, New York, Pennsylvania, and Ohio, to the city of Dayton, Ohio, with branches radiating to other points in the said several States, and has operated such lines of railroad as a common carrier of freight and passengers and as a carrier of the United States mails for many years; and said railroad extends into and through the county of Orange in the State of New York, in the Southern District of New York, to the village of Montgomery, in said county and State, and it maintains a railway station in the said village of Montgomery for the performance of its business there, and said Erie Railroad Company during the year 1912 was the owner of certain railway cars which regularly performed trips at stated periods, to wit, several times daily, from the said city of Jersey City, in the State of New Jersey, to the said village of Montgomery, in the county of Orange, and the State and Southern District of New York. That the United States mail was on the said day and for some years prior thereto had been regularly carried between the said city of Jersey City and the said village of Montgomery.

10

And the jurors aforesaid, on their oath aforesaid, do further present that for many years it has been, and still is, considered by railroad men that a necessary instrumentality in the successful and safe operation of railroads is a line of telegraph situated along and upon the right of way of the railroad, with wires, connecting with practically all of the cities and villages along and upon said railroad, in order that information and orders may be transmitted thereby from the central offices from which the movement of trains is controlled to railroad offices situated in the various railway stations along the lines. That in all these offices are telegraph operators by and through whom the information and orders transmitted and also communicated to the conductors and engineers in charge of the trains moving along and upon the said railroad; that the maintenance and operation of such a line of telegraph involves a large expense, if operated exclusively by the railroad company for railroad purposes.

And the jurors aforesaid, on their oath aforesaid, do further present that the Western Union Telegraph Company is a corporation, organized under the laws of the State of New York, and is engaged in operating a system of telegraph lines for the transmission of messages for the Government of the United States and for the general public, radiating from its main office in the city of New York to all parts of the United States and connecting with cables to foreign countries; that for the purpose of creating as nearly a universal system of telegraph as practicable, it is necessary that offices be estab-

lished, not only in the large cities, but also in the smaller towns
11 and villages throughout the State of New York and the other

States of the Union, that in most of these smaller towns and villages the telegraph business is not sufficient to meet the expense of maintaining such offices, if the same should be maintained by the Western Union Telegraph Company alone; that this was early discovered in the development of the telegraph system and in the interest of economy, therefore, and in order to make the telegraph system as nearly universal as possible, railroad companies and telegraph companies have for many years maintained joint telegraph lines situated along and upon the rights of way of the railroad companies, and have used such lines in common; that such an agreement was entered into between the said Erie Railroad Company and the said Western Union Telegraph Company on September 25, 1907, and is still in full force and effect, and a copy of said agreement between the said Erie Railroad Company and the said Western Union Telegraph Company is attached to this indictment, and is made a part hereof with the same force and effect as though it were recited at length in said indictment.

That at the village of Montgomery aforesaid the said Erie Railroad Company maintained, on June 27, 1912, a railroad station and office for the sale of tickets and the receipt of freight, and a telegraph office, with one G. A. Osborne in charge as its agent and telegraph operator; that the Western Union Telegraph Company also main-

tained in the said village at the same time and in the said rail-
12 way station and office of the Erie Railroad Company an office
for the receipt, delivery, and transmission of telegraph mes-
sages under the provisions of said contract, with the said Osborne in
charge thereof as its agent.

That in accordance with the provisions of the said contract the Western Union Telegraph Company had, some years prior to June 27, 1912, constructed, and on that day maintained and operated, along the right of way of the Erie Railroad Company two wires leading into the office at Montgomery aforesaid, one of which wires were set apart for the business of the railroad company and the balance of which was used for the business of the telegraph company; that the said office was equipped and maintained and in accordance with the provisions of the said contract and for some years had been operated and maintained as above stated. That the said Osborne received

a salary which was paid to him by the Erie Railroad Company, and no part of which was paid, either directly or indirectly, by the Western Union Telegraph Company; that in accordance with the provisions of the said contract one E. P. Griffith had been duly appointed as joint superintendent of telegraph and was acting as such joint superintendent of telegraph on June 27th, 1912; that the said Erie Railroad Company, on the said twenty-seventh day of June, 1912, carried otherwise than in the said United States mail, to wit, in what is known as the railway or train mail, in one of its railway cars, a letter from E. P. Griffith, who was then and there joint superintendent of telegraph of the said Erie Railroad Company and
13 the Western Union Telegraph Company, to G. A. Osborne, who was then and there the agent of the said Erie Railroad Company at Montgomery aforesaid, and also telegraph operator of the Western Union Telegraph Company at Montgomery aforesaid, of which the following is a copy:

"JUNE 27TH, 1912.

"MR. E. A. OSBORNE,

"Agent Erie Railroad Co. and Manager W. U. Tel. Co.,

"Montgomery, Orange County, N. Y.

"DEAR SIR: I forwarded to you by train mail on June 20th a copy of the new Western Union Telegraph Company's tariff book, which shows a considerable number of changes in telegraph rates, particularly with respect to the old 40-cent rate having been reduced to 30 cents to a considerable number of points, and I would ask that you familiarize yourself with the new rates in order to avoid check errors. The misquoting of rates creates a large number of error sheets and correspondence, and not only confuses the auditing department of the W. U. Tel. Co., but also delays settlements between the Telegraph Company and the Erie Railroad.

"As you are aware, the Erie Railroad receives a percentage of the W. U. Tel. Co.'s telegraph receipts at all Erie railroad stations, where the agent of the railroad, under contract with the telegraph company, also acts as the agent or manager of the telegraph company, and that the handling of Western Union telegrams, in making up of Western Union reports, from which the railroad company's proportion of receipts are figured, and all of the accounting and correspondence relative to Western Union matters are as much the current business of the railroad as handling accounts or reports made in connection with the freight shipments or sale of tickets for the railroad, the railroad company receiving a revenue from all.

"Your attention is specially called to modification of Rule No. 8 for the instructions to all New York State offices only and to be used instead of rule 8, printed in the tariff book, printed copy of which I enclose herewith.

"Yours, truly,

"(Sd.)

E. P. GRIFFITH,

"Supt. of Telgh."

"Modification of Rule 8.

"For the instruction of New York State offices only and to be used instead of the rule 8 printed in the tariff book.

"Certain modifications in our rule 8 have been made necessary by an order of the New York Public Service Commission, which has decided that place of origin with its date are not to be counted and charged for in telegrams originating at and destined to places in New York State, as heretofore dealt with in Rule 8.

"The new rule 8 is as follows:

"RULE 8.

"Extra dates.

"Every message must show the place where the message originated and the date.

"On messages originating on this company's line, or on messages coming to this company's line from connecting lines at points designated in the tariff book of this company as the proper place for such message to reach Western Union lines, the originating point and date shall be transmitted free.

"Whenever a message which has come over the line of a connecting company is offered at a place not indicated by the tariff book of this company as the proper place for such message to be delivered to this company for further transmission; or whenever a message is received at any office by mail to be forwarded by telegraph; or in case a person, having received a message, requests the same to be forwarded to another place; or if a person leave town before the arrival of an expected message and it be forwarded to him, in each of these instances the name of the place at which the message is delivered to this company for further transmission, as well as the name of the State and the word 'via,' will be counted and charged for. The name of the place where the message originated, with its date, as the same appears on the message, will be transmitted free.

"For example, if the following message should pass over the lines of a connecting company from Lockport, N. Y., to Utica, N. Y., and Utica should not be a place named in the tariff book as the proper place for such a message to be delivered to Western Union lines, or if such message dated at Lockport should be received at Utica through the mail, or be received by any other person at Utica than the addressee by telegraph or mail, or should arrive by this line after the addressee had left town and the request in either of these cases be made that it be forwarded to Saratoga, it will be sent as follows:

"LOCKPORT, N. Y., Oct. 24, via Utica, N. Y.

"JOHN BROWN, Saratoga, N. Y.

"Meet me next Monday at ten o'clock in the forenoon.

"H. SMITH.

"13 paid, 3 extra, thus adding in and charging for as a part of the message the words 'via Utica, N. Y.,' three words.

“ Forwarded messages.

“ When a message, which is to be forwarded, is a ‘ received collect ’ message, the forwarding office will check it so that the tariff from that office to destination shall appear in the check as ‘ this ’ line tolls, and the tariff from the originating office to the forwarding office as ‘ other ’ line tolls. Remarks: Suppose the tariff from Lockport to Utica to be 35 and 2, and from Utica to Saratoga 25 and 2, and a ten-word message has been sent ‘ collect ’ by Lockport to Utica, which the latter office is to forward to Saratoga; Utica should check the message (counting three extra words), ‘ 14 collect 31 and 35. ’ The ‘ 31 ’ (tariff from Utica to Saratoga) represents the ‘ this ’ line tolls for thirteen words, and ‘ 35 ’ (tariff from Lockport to Utica) represents the ‘ other ’ line tolls for ten words.

“ B. BROOKS,
“ *General Manager.* ”

That the said letter did not relate to any part of the cargo in the said railway car or in the train of which the said railway car was a part, or to the current business of the said Erie Railroad Company, or to any article carried at the same time by the same railway car, or by the train of which the said railway car was a part; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 184, U. S. C. C.)

H. SNOWDEN MARSHALL,
United States Attorney.

16 AGREEMENT BETWEEN THE WESTERN UNION TELEGRAPH COMPANY
AND ERIE RAILROAD CO.

17 This agreement, made and entered into in duplicate this twenty-fifth (25th) day of September, 1907, by and between the Western Union Telegraph Company, a corporation of the State of New York, party of the first part, hereinafter designated for convenience as the telegraph company, and the Erie Railroad Company, a corporation of the State of New York, party of the second part, hereinafter designated for convenience as the railroad company, for itself and for and in behalf of the Chicago and Erie Railroad Company, the New Jersey and New York Railroad Company, the Erie Terminals Railroad Company, the New York, Susquehanna and Western Railroad Company, Wilkes-Barre and Eastern Railroad Company, and Bath and Hammondsport Railroad Company, witnesseth that—

Territory.

Whereas the railroad company now owns, leases, or controls certain railroads intended to be covered by this contract in the territory generally described as lying east of Lake Michigan; and

Schedule A.

Whereas the mileage of said railroads, as the same now is and may hereafter be, from time to time, is and shall be shown in a schedule hereto attached and marked "Schedule A"; and

Schedule B.

Whereas the telegraph poles, wires, and appurtenances which now are or may hereafter be owned or controlled by the telegraph company along said railroads are and shall be shown in a schedule hereto attached and marked "Schedule B"; and

Schedule C.

Whereas the telegraph poles, wires, and appurtenances which now are or may hereafter be owned or controlled by the railroad company along said railroads are and shall be shown in a schedule hereto attached and marked "Schedule C"; and

Schedule D.

Whereas telegraph lines have heretofore been operated over the railroads of the railroad company in accordance with the
18 provisions of contracts named in a schedule hereto attached and marked "Schedule D"; and

New agreement.

Whereas it is desired that an agreement be entered into between the parties hereto covering all railroads and branches or extensions now owned, leased, or controlled, and also all branches or extensions thereof and all minor railroads hereafter owned, leased, or controlled by the railroad company in said territory, granting to the telegraph company the right to maintain and operate telegraph lines thereon, and providing for the maintenance and operation of the same by the telegraph company, all on the terms and conditions herein provided;

Now, therefore, for and in consideration of the mutual covenants of the parties hereto, it is agreed between them as follows:

Lease.

First. The railroad company does hereby, so far as it lawfully may, agree to let, lease, and demise and does by these presents let, lease, and demise unto the telegraph company, its successors and assigns, the right to maintain along said railroads, the said poles, with the wires thereon, and the instruments, batteries, machinery, tools, loops, insulators, cross arms, fixtures, and other appurtenances thereto belonging which may now or hereafter be owned or controlled by the

telegraph company along any and all of the said railroads intended to be covered by this agreement, as hereinbefore provided, and the same shall be shown in said Schedule B hereto annexed, with the right to erect and maintain on said poles additional wires as hereinafter provided, together with the right to operate and use all of said poles, wires, and other property; and the railroad company does hereby agree to let, lease and demise, and does by these presents let, lease, and demise unto the telegraph company, its successors and assigns, all lines of poles, with the wires thereon, and the instruments, batteries, machinery, tools, loops, insulators, crossarms, fixtures, and other appurtenances thereto belonging, now or hereafter owned or controlled by the railroad company, along any or all of

the said railroads intended to be covered by this agreement, 19 as hereinbefore provided, as shown in said Schedule C hereto annexed; with the right to erect and maintain on said poles additional wires as hereinafter provided; together with the right to operate and use all of said poles, wires, and other property hereby leased, and to enjoy the returns and profits thereof, as fully and effectually as could be done by the railroad company:

To have and to hold the same unto the telegraph company, its successors and assigns, during the continuance of this agreement, and subject to the uses and conditions hereinafter set forth.

It is understood and agreed that the rights and privileges given the telegraph company in this agreement are subject to all conditions and reservations affecting the tenure of the railroad companies for and in behalf of which this agreement is made to the railroads, premises, and property in connection with which said rights and privileges are given.

During the continuance of this agreement said poles, wires, and other telegraph property shall be used, maintained, repaired, and renewed as hereinafter provided, and upon the termination of this agreement said poles, wires, and other telegraph property enumerated in the said Schedule C and hereby leased to the telegraph company, or such poles, wires, and other telegraph property as may have been substituted therefor in the proper repair, maintenance, and renewal thereof, shall be returned to the railroad company in like good order and repair as when received by the telegraph company, and the telegraph company shall thereupon remove from said poles such wires and fixtures as it may have thereon.

Taxes.

The telegraph company agrees to pay all taxes and assessments lawfully assessed or imposed upon or on account of the telegraph property and telegraph lines or business covered by this agreement of both parties hereto, and in case the same shall be assessed against the railroad company the telegraph company agrees to reimburse the railroad company therefor, and no part of said taxes will be paid by the railroad company.

Material, labor, construction.

Second. The telegraph company agrees to furnish at some station on the railroad company's railroads all poles, wire, insulators, and other material and tools, and all labor to dig holes and set poles and anchors, braces and guys, and to string wires, and to do all other work for the construction of a line of poles and one wire along each and every extension and branch of or from the railroad company's railroads, and along any railroad now or at any time hereafter during the life of this agreement owned, leased, or controlled by the railroad company, to which this agreement may extend and on which there may be no line of telegraph; and also for the construction from time to time of the additional wires necessary to make up the mileage of wires to be set apart for the business of the railroad company as hereinafter provided, along all or any of its railroads and the said branches and extensions thereof, now or at any time hereafter covered by this agreement.

Material, labor, maintenance, reconstruction.

The telegraph company further agrees to furnish at some station on the railroad company's railroads as and when necessary all poles, wire, insulators, and other material, and tools, and all labor required to dig holes and set or reset poles and anchors, braces and guys, and to string wires, or to do all other work for the maintenance, repair, and reconstruction of all the lines of poles and wires now or at any time hereafter belonging to either party hereto, along the said railroads now or at any time hereafter covered by this agreement. And the joint superintendent hereinafter provided for shall keep and maintain all of said lines of poles and wires in good order and repair and shall exercise the same care and diligence in the maintenance and repair of the wires which the telegraph company has or may have along said railroads that he does in the maintenance and repair of wires used exclusively by the railroad company.

Hand cars, etc.

The railroad company further agrees to furnish to the telegraph company the free use of hand cars, tool cars, and boarding cars in the work of construction, repairs, and reconstruction provided for in this agreement, whenever the railroad company may have the same available for this purpose; and the telegraph company agrees to assume the loss or damage to any such hand, tool, and boarding cars, except where it is clearly shown that the damage was caused through the fault of the railroad company.

Railroad section men.

The section men of the railroad company shall examine and look after the condition of the lines of poles and wires of both parties hereto along all the railroads covered by this agreement, and in

cases of breaks or interruptions shall notify the nearest lineman of the telegraph company, who shall put the lines in good order as soon as practicable; but such temporary repairs and replacements as can be performed by railroad section men to put the lines in working order shall be made by said section men, the telegraph company supplying all tools and materials therefor, and assuming the cost of the labor.

Foreman.

The work of construction and reconstruction hereinbefore provided for and of the construction of additional wires hereinafter provided for shall be done under the immediate direction of a foreman or foremen to be furnished by the telegraph company, acting under the orders of the joint superintendent hereinafter mentioned.

Batteries, instruments, etc.

The telegraph company agrees to furnish the use of its main batteries or other source of main-line current for the operation of the wires covered by this agreement and to furnish from time to time standard telegraph instruments and other telegraph equipment and local batteries and battery supplies for the offices of both parties hereto along said railroads, it being understood and agreed that instruments and local batteries belonging to the railroad company and now in use at its offices shall continue to be used thereat until it shall be necessary to replace them.

The railroad company agrees to furnish in its station houses when required by the telegraph company suitable space for, and the linemen of the telegraph company shall attend to, main batteries for main and branch line purposes.

Railroad signal and telephone wires.

In addition to the wires furnished for its use as hereinafter provided, the railroad company may, at its own expense, place and maintain such signal wires, cables and telephone wires as may be necessary for its railroad business only on the poles along the railroads covered by this agreement, said wires and cables to be placed and maintained in such manner and position on the poles as the telegraph company may designate, except as hereinafter provided, and
22 to be shifted or changed from time to time at the railroad company's expense, from one location to another on said poles as may be necessary to meet the telegraph company's requirements in the use of the poles for its own wires. Nothing herein contained shall be construed as requiring the telegraph company to furnish any material, labor, instruments, batteries, or appliances for the construction, maintenance, repair, or operation of such signal wires or telephone wires for the railroad company's use, except at the railroad company's expense.

In case, however, of the railroad company despatching trains on its main or branch lines by telephone instead of by telegraph, the telegraph company agrees that it will maintain the wires, and furnish the use of main or branch line batteries for this purpose, the railroad company to furnish the instruments. The mileage of telephone wires so maintained to be treated as an equal amount of telegraph wire in fixing the amount of free wire to be furnished by the telegraph company for the railroad company. This paragraph is not intended to cover telephones for yard and terminal service.

Location.

The railroad company's wires and wires furnished for its use under this agreement shall have equal rights as to location with the telegraph company's wires of equal importance, but the telephone or telegraph wires used by the railroad company in long-distance service and for despatching trains shall have preference as to location in the discretion of the railroad company.

Wires for railroad business—Percentage—Minimum mileage.

Third. The telegraph company agrees to set apart, from time to time as and when necessary, on its poles and in its submarine cables under streams and in underground cables which it may have through cities or towns along the railroads now or hereafter at any time covered by this agreement and owned, leased, or controlled by the railroad company, for its exclusive use in matters pertaining to its railroad business, continuous wires of the best standard for the purpose of telegraphing and telephoning, and to meet differing and changing conditions, equipped by the telegraph company for telegraph purposes only, except where trains are despatched by
23 telephone, in which case the instruments are to be furnished by the railroad company, not exceeding a mileage equal to 45 per cent of the mileage of wire used by the telegraph company for commercial or public telegraph business along said railroads, but the total mileage of such railroad wires shall not be less than 11,000 miles for the railroads shown in Schedule A at the date hereof.

Joint wires.

It is agreed that each mile of wire used jointly by the parties hereto shall be calculated as one-half mile each of exclusive railroad and commercial wire.

Gauge and character of railroad wires—Method of computing mileage.

The wires furnished by the telegraph company to the railroad company under this agreement shall be of such gauge and character as the railroad company may designate, and shall be run into the

railroad company's offices and connected with the instruments and batteries therein by the linemen hereinbefore provided for. In case the railroad company requires wires of larger gauge and greater cost than the telegraph company or the railroad company would ordinarily furnish for railroad telegraphing, the mileage of such larger gauge and costlier wires shall be computed and charged up against the railroad company's allowance of wires in the ratio of the cost of such larger gauge and costlier wires, to the cost of such wires as the telegraph company or the railroad company would furnish as aforesaid; and the mileage of the said commercial wires along said railroads, on which the allowance of said railroad wires is based, shall be computed in like manner.

Additional roads.

The same percentage of commercial and railroad wires shall be applied to railroad mileage hereafter brought within the scope of this agreement, with a like minimum for the mileage thereof, but not less than the mileage of wire thereon then used for railroad business.

Distribution of wires.

The distribution of said railroad wires upon and along the lines of the respective railroads covered by this agreement shall be in such manner and proportion as the railroad company may designate. The telegraph company will furnish the railroad company with wires along railroads over which it has trackage rights and on which the telegraph company has poles, at one-half the telegraph company's usual rate of wire rental.

24 When the trains of any other railroad company are operated under contract over any part of the railroad company's railroads covered by this agreement, the telegraph company will furnish said other railroad company with wires for its exclusive railroad business on such part of the railroad company's railroad, at the usual rate of wire rental; this rental to be paid to the telegraph company, and such wire or wires will be counted as telegraph company's wires.

Wires included in mileage allowance.

It is expressly understood and agreed that wires now used by the railroad company, whether owned by the railroad company or by the telegraph company, and whether used jointly or exclusively for railroad business, shall be included as a part of said mileage of wires to be set apart for railroad business; and, furthermore, that the railroad company shall call for the setting apart, under the foregoing provisions, of only such wires, in addition to those now used by it, as may from time to time be necessary or reasonably required for the prompt and efficient transaction of its business.

In figuring the mileage of joint wires one-half will be counted for each party.

Schedule E, wires used by railroad co.

A schedule of all wires now used by the railroad company, whether owned by it or by the telegraph company, and the mileage thereof, is hereto attached marked "Schedule E," to which schedule wires hereafter set apart for railroad business shall be added from time to time.

Joint use of wire.

On portions of the railroads, extensions, or branches covered by this agreement, where one wire will suffice for the business of both parties, said wire shall be used jointly by the parties hereto in the transmission of railroad and commercial telegraph business, it being agreed that the messages of the railroad company directing the movement of trains shall have precedence over said joint wire.

Where joint wire insufficient—Excess.

Whenever, in the opinion of either party, such or any other joint wire does not properly accommodate the business of both parties, the telegraph company, on receiving or giving sixty (60) days' notice, in writing, agrees to furnish the material and labor for the construction of a wire for commercial business, and after the erection of
25 such wire, the wire theretofore used jointly shall be set apart for the railroad company's railroad business exclusively, and thereafter each mile thereof shall be calculated as one mile of exclusive railroad wire. If thereby an excess mileage of exclusive railroad wire be created over said allowance of railroad wires, said excess mileage shall be paid for by the railroad company at cost to the telegraph company, less proper deduction for depreciation in value, in the same manner as if said wire had been erected on notice from the railroad company, as hereinafter provided.

On such wires so set apart by the telegraph company for the railroad company's exclusive use, telephone or composite circuits may be superimposed or worked as the railroad company may desire, at its own cost, in handling of its own business, provided that such use shall not interfere with the operation of said wires for telegraphic purposes nor with the use or operation of other wires on the same poles.

Wires for railroad business in excess of allowance.

When and if the allowance of wires for the exclusive use of the railroad company, herein provided for, shall have been exhausted, then the telegraph company shall, within sixty (60) days after receipt by it of written notice so to do, furnish material and put up an additional wire or wires along any railroad owned, leased, or controlled by the railroad company, and covered by this agreement, for the transmission of messages on its railroad business exclusively;

and the railroad company agrees to pay to the telegraph company on completion thereof a sum equal to the entire cost to the telegraph company of said additional wire or wires upon the poles, including the cost of the insulators, pins and tie wires and proportionate cost of cross-arms thereunto belonging, and the cost of the labor for erecting the same on the poles, but not including any part of the cost of poles; but said sum or a proportionate part thereof shall be refunded by the telegraph company to the railroad company whenever and to the extent that the increase in the mileage of commercial wires of the telegraph company entitles the railroad company to the use of additional mileage of railroad wires.

Schedule F. excess mileage of railroad wires.

26 Said excess mileage of railroad wires, as the cost thereof is paid by the railroad company, and is refunded by the telegraph company, shall be shown in an account to be kept by the joint superintendent hereinafter mentioned, and to be known as Schedule F of this agreement.

Interruptions.

Whenever the use of the wire of either party is interrupted, the business of both parties hereto shall, as far as may be practicable, be done over any available working wire, railroad messages directing the movement of trains having precedence.

Commercial wires at railroad stations.—Local commercial business on railroad wires.

Wires put up exclusively for through commercial business shall not, without the consent of the telegraph company, be connected with any railroad stations or instruments. Such local commercial business may be done on exclusive railroad wires as, in the judgment of the railroad company, can be done thereon without interference with railroad business.

Wires in cities or towns.

The telegraph company agrees to furnish the railroad company with the use of wires in the telegraph company's underground conduits and submarine or aerial cables or on its poles, or otherwise wherever the telegraph company has established or may hereafter establish lines available for such purpose, and such use may be required for the purpose of connecting the offices of the railroad company in towns or cities reached by the railroads or ferries of the railroad company, covered by this agreement, with the telegraph or telephone wires used for railroad business provided for herein, the mileage thereof to be included in the allowance of wires for the exclusive use of the railroad company hereinbefore provided for.

Free telegraphing between points on the line of road.

Fourth. All messages of the railroad company, and of its officers, employees, and agents, pertaining to its business, shall be transmitted free of charge by railroad operators on the wires set apart for said business, between all telegraph stations, offices, or other buildings of the railroads covered by this agreement.

Franks for railroad business.

The telegraph company agrees to issue or cause to be issued to such officials of the railroad company, and of its own subsidiary railroad, coal, transportation, and steamboat companies, and of its own freight and transportation lines, as may be designated by the president, vice president, or general manager of the railroad company, annual franks authorizing the transmission of messages signed
27 by such officials, and answers thereto, relating strictly to the business of the railroad company and its subsidiary companies, originating at or destined to points on the telegraph company's lines in the United States and Canada, either on or off the line of said railroads.

The tolls on all such messages shall be calculated at 55.47 per cent of the regular commercial day rates of the telegraph company between points where such messages originate and points to which destined, and charged to the railroad company in one account to be settled for as hereinafter provided. No charge shall be made for any message between points on the lines of the railroads at any time covered by this agreement, but if sent between the telegraph company's independent offices such messages shall be charged up to the railroad company. Settlements of all accounts between the parties hereto shall be made annually.

The telegraph company agrees that in each and every year during the continuation of this agreement it will furnish to the railroad company freight traffic of the kind described in subdivision (C) of article fifth, to such an amount that the earnings of the railroad company thereon at its regularly established rates shall not be less than the amount charged by the telegraph company against the railroad company for telegraph messages in the same year as above provided. The telegraph company further agrees that in case of its failure so to do its charge for telegraph service for the railroad company and its subsidiary companies in such year shall be reduced to the gross earnings of the railroad company upon such freight traffic of the telegraph company.

Use of franks.

It is understood and agreed that the telegraphic service under franks herein provided for applies only to the transmission of messages concerning the operations and business of the railroad com-

pany, and shall not be extended to any messages for transmission by ocean cable, and shall not be so used by the railroad company as to compete with the telegraph company.

Freight lines.

In the use of said franks by the freight and transportation lines aforesaid the railroad company shall pay, or cause to be paid, to the telegraph company as herein provided, the amounts chargeable to other interests than the railroad company, as determined by the railroad company; statements of such freight and transportation lines' telegraphic service to be rendered separately by the telegraph company to the railroad company monthly.

Freight lines.

It is further agreed that messages sent upon business of freight and transportation lines, in which the railroad company has a minor interest, other than those hereinbefore mentioned in this section, shall to the extent of such interest, be deemed to be upon the business of the railroad company and subject to the provisions in respect to such business herein contained; and any charges made by the telegraph company upon business of such freight or transportation lines shall, to the extent they are charged by said lines to the railroad company, or to the extent of the proportion of the railroad company's ownership in such lines, be refunded to the railroad company and the amount thereof charged to the railroad company's account.

Annual passes.

Fifth. The railroad company, so far as it lawfully may, agrees (A) to issue to the general officers of the telegraph company annual passes authorizing their transportation over the railroads covered by this agreement when traveling on the business of said telegraph company covered thereby.

Transportation.

(B) To transport over all such railroads, upon application of a superintendent or other general officer of the telegraph company, all persons in the employ of the telegraph company when traveling on such business of said company, and to transport over such railroads, including train service for distribution wherever required along any of said railroads, all poles, wire, cross arms, and other material and supplies of the telegraph company for the construction, maintenance, operation, repair, and reconstruction of the lines and wires upon and along such railroads, and of such additional wires and lines of poles and wires as may be erected under the provisions of this agreement; and also to so transport all supplies for

the establishment, equipment, maintenance, and operation of the telegraph offices of the telegraph company and the railroad company, at places along and adjacent to, or at the termini of said railroads,

and also old material from the offices and lines along said railroads returned to the telegraph company's supply department.

It being clearly understood that the transportation outlined does not cover any material for the building, repairs, or renewal of any telegraph line not on the line of said railroads, nor for the offices of such line, nor for any offices unless the mains leading from them run along the railroads covered by this agreement; and

(C) To transport the telegraph company's poles, wire, cross arms, and its other material and supplies over any or all the railroads covered by this agreement, to be used beyond or off the line of all such railroads, and that all the transportation covered by this paragraph C shall be charged up by the railroad company to the telegraph company's account at regular current, through, or local transportation rates, as the case may be, and settlements made therefor annually, as above provided in the fourth article of this agreement.

Liability.

All passes or transportation in any form granted by said railroad company, at the request of said telegraph company, shall be subject to the railroad company's usual contract releasing it from all liability for any injury to the person or for any loss or injury to the property of the person to whom passes or transportation may be issued, whether such injury or loss shall be caused by the negligence of the railroad company itself, its agents or servants, or otherwise.

Offices—Instruments, batteries, and blanks.

Sixth. Either party to this agreement may at any time establish and maintain telegraph offices at such stations on said railroads covered by this agreement as it may deem necessary, and at all such offices as the railroad company may establish the telegraph company agrees to supply from time to time standard telegraph instruments and other telegraph equipment and local batteries, and material to maintain said batteries, and blank forms and stationery for commercial business.

Signs.

The telegraph company shall have the right to place, keep, and display its standard or other suitable signs in and upon the railroad company's depots or station houses in which telegraph offices are located where commercial or public telegraph business is transacted by the operators employed by either party hereto, the location of such signs in all cases to be designated by the joint superintendent of telegraph hereinafter provided for.

Closing offices.

Either party may discontinue any of its offices at its pleasure.

If the telegraph company removes its office from one of the railroad company's stations, the railroad company shall still have the right to continue doing a commercial business in said station, and the telegraph company will provide the usual signs for such business, but in such case the railroad company will not solicit business in competition with the telegraph company.

Railroad offices, operators, etc.—Commercial business—Receipts—Free messages—Rules.

At all telegraph offices of the railroad company now or hereafter maintained in its railroad stations the railroad company shall, at its own expense, furnish office room, light, and heat for telegraph service, and shall also, at its own expense, provide an operator and other employes, who, acting as agents of the telegraph company, shall receive, transmit, and deliver, exclusively for the telegraph company, such commercial or public messages as may be offered, and shall charge the tariff rates of the telegraph company thereon, and shall render to the telegraph company monthly statements of such business and full accounts of all receipts therefrom, and the railroad company agrees to pay all of such receipts to the telegraph company, other employes, who, acting as agents of the telegraph company, may direct, but the railroad company shall not be responsible for the failure of its operators to pay over such receipts. And said operators and other employes shall not, without the consent of the telegraph company, transmit over said telegraph lines any free messages, except those herein provided for, and concerning all telegraph business, whether paid or free, shall conform to all rules, regulations, and orders of the telegraph company applicable thereto.

Additional operator.

Whenever the telegraph business of both companies at any such office becomes so large that one operator engaged solely in telegraphing can not attend to it, then at the option of the railroad company the telegraph company shall either remove the commercial business from the station or shall employ its own operator.

31 The railroad company, however, shall receive its usual percentage of the receipts in case the telegraph office remains in the station.

Messengers.

The joint superintendent hereinafter mentioned may, when in his judgment delivery of messages cannot be made at any such stations by railroad employes without neglect of their railroad duties, employ

a messenger, whose compensation shall be divided between the parties hereto in the same proportion as the cash receipts are divided.

The telegraph company agrees to pay to the railroad company as soon as practicable after the close of each month, 25 percentum of the cash receipts at offices in the railroad company's stations or other buildings received from commercial or public messages of the telegraph company; except that all tolls on ocean cable messages and tolls or charges of other companies shall be retained by the telegraph company, which shall make settlement therefor with connecting lines, but the telegraph company shall not be responsible to the railroad company for its said proportion of any such cash receipts which its operators fail to pay over to it. The railroad company shall have the right to investigate the accounts of the telegraph company so far as they relate to these earnings. In case the telegraph company shall fail to make the monthly payments to the railroad company as herein provided and shall remain in default for a period of ninety days, after notice and demand in writing, the railroad company may retain from the cash receipts the sums to which it may be entitled instead of paying the same over to the telegraph company as hereinbefore provided.

Public telegraph or telephone business for others.

No employé of the railroad company shall, without the consent of the telegraph company, be employed in the transaction of commercial or public telegraph or telephone business by or for any party other than the telegraph company party hereto; and so far as the railroad company may lawfully grant such a privilege the telegraph company shall have exclusive right to the occupancy of the railroad company's depots and station houses for commercial or public telegraph business as against any other party, except as limited in the seventh section hereof; provided, however, that nothing in this agreement shall prevent the railroad company from
32 having or establishing joint depots or station houses with other railroad companies, and this agreement shall not be deemed violated by the occupancy of such joint depots or station houses for telegraph purposes by the parties using them jointly with the railroad company or by others claiming under such parties.

The railroad company agrees that its employés in or at railroad depots or station houses shall not be permitted to collect or receive from any telephone company, or from the public, any personal compensation for service attendant upon or in connection with public long-distance telephones thereat.

Compensation for special services and property.

Compensation for special services of railroad employés, and for the use of the railroad company's buildings and lands, which are not herein otherwise provided for and which the railroad company may

grant in its discretion, and which may be desired by the telegraph company, shall be paid by it to the railroad company directly in such amount as may be mutually agreed upon in each case.

The telegraph company shall test without charge the railroad telegraph wires in the telegraph company's regular testing offices during the hours such offices are open.

Telegraph company's offices in railroad depots.

Seventh. If the telegraph company elects to furnish its own operator or operators, and to establish an independent office, or to continue the maintenance and operation of any independent office now operated by it, at any terminal or way station of the railroad company, the railroad company shall furnish office room, light and heat, free of charge, in that part of the station building which is used for station purposes, and for this service it will be given 25 per cent of the cash receipts from commercial business at such station (cable and other line tolls excepted); and if at such station one person can attend to the telegraph business of both parties hereto, the agent of the telegraph company, acting for, and as the agent in the premises of the railroad company, shall do such business of said railroad company without charge. The telegraph company, however, can, at its option, establish an up-town office and abandon such independent office in the station.

33

Additional operator.

Whenever the telegraph business of both companies at any such office becomes so large that more than one operator is needed to attend to it, then the railroad company shall employ and pay its own operator.

Office privileges elsewhere.

Nothing herein contained shall be construed as giving the telegraph company any office privileges elsewhere than in said part of the station building which is used for station purposes; but in case the telegraph company shall apply for the privilege of establishing and maintaining a telegraph office in any hotel or public office building of the railroad company, or building other than a station building of the railroad company, the telegraph company shall be given either the preference as to location or exclusive privilege on equal terms over any competitor likewise applying for such privilege.

Rights granted to telegraph co.

Eighth. The railroad company, so far as it lawfully may, hereby grants and agrees to assure to the telegraph company the exclusive right to do and conduct commercial or public telegraph business and to construct and maintain telegraph lines, to be operated either by

telegraph or telephone instruments, or both (but not for the purpose of doing and conducting commercial or public telephone business), for the term of and subject to the conditions and limitations in this agreement provided, on, along, across, and under the line, lands and bridges, and in the premises of the railroads now or hereafter covered by this agreement, and any extensions and branches thereof; and for that purpose the railroad company grants to the telegraph company during the continuance of this agreement right of way and entry upon, along, across, and under the line, lands, and bridges of the railroads now or hereafter covered by this agreement, and any extensions and branches thereof, for the construction, maintenance, operation, and use of lines of poles and wires, and underground or other lines, for the commercial or public business aforesaid, with the right to put up or construct or cause to be put up or constructed from time to time, under the supervision of said joint superintendent, and at the sole cost of the telegraph company, except as herein otherwise provided, such additional wires and such

34 additional lines of poles and wires and underground or other lines, and to issue revocable licenses for the occasional and limited use of the poles covered by this agreement for such telegraph or telephone wires as the telegraph company may deem expedient, and which may not, in the judgment of the railroad company, interfere with its business and purposes or the operation of its railroads; but no additional or second line of poles shall be placed on said lands or right of way already occupied by one line of poles without the railroad company's consent.

Double lines of poles.

Wherever the telegraph company now has two lines of poles on the railroad company's lands or right of way, the telegraph company shall have the right to keep said two lines on said lands or right of way during the continuance of this agreement.

Defense of grants.

Provided always, that in protecting and defending the exclusive grants conveyed by this agreement the telegraph company shall have the aid of the railroad company, and may, subject to the approval of counsel for the railroad company, but at its own expense, participate in the conduct of any litigation to which the railroad company is a party affecting the same.

Prior grants—Crossing privileges.

It is expressly agreed and understood that nothing herein contained shall be held to require the railroad company to withhold from any other party the use and enjoyment of rights granted prior to the grant herein contained or any rights conferred by law, or to withhold from any party desiring to do a public telephone business the

privilege of using its stations, offices, other buildings, or property, or to withhold from any party the privilege of crossing with its poles and wires the railroad company's property, but in such cases the railroad company will embody in its licenses, so far as it can lawfully do so, suitable provisions protecting the telegraph company's poles and wires from interference or interruption by said crossing poles and wires, and especially by high-tension wires.

Location of telegraph co.'s lines—Changes.

It is understood and agreed that the pole lines or underground lines of the telegraph company along said railroads shall be of such character as not in any manner to endanger or interfere with the operations or property of the railroad company and shall be located
35 in such position on said lands, roads, or bridges as the railroad company may direct, and the telegraph company agrees to change at its expense from time to time the location of any of its poles and wires from one place to another on the railroad right of way or bridges, or to locate for short distances all wires on one line of poles or in aerial or underground cables or otherwise as the proper officers of the parties hereto may agree, in order to meet the requirements of the railroad company in the use of said right of way for the purposes of the railroad company.

Notice—Contractors.

In making changes or improvements in or additions to its railroads, tracks, embankments, cuts, tunnels, rights of way, bridges, buildings, and other structures, the railroad company shall instruct its employes to give the joint superintendent timely notice of any changes required in the location of the telegraph lines, and shall instruct its employes and its contractors to protect the telegraph lines from interruptions by derricks, blastings, and otherwise; and in cases where such work is done by contractors the railroad company when requested by the telegraph company through the joint superintendent, if in the judgment of the railroad company it is practicable to do so, shall require its contractors to give proper and suitable bonds indemnifying the telegraph company against damages arising from the prosecution of their work.

Bridges partly owned, etc.

The railroad company further agrees to use its best efforts to procure for the telegraph company the right to place and maintain, under the terms of this agreement, its wires and fixtures on, along, over, and under any railroad bridge and bridges, and approaches thereto which may be partly owned, controlled, or used by the railroad company.

Reservation.

This agreement during its continuance only, is intended to give to the telegraph company the exclusive right to construct, maintain, and operate telegraph lines for commercial or public telegraph business on the right of way of the railroad company, so far as the railroad company may lawfully grant the same. It is understood and agreed, however, that the railroad company reserves and shall have the right to itself place, construct, maintain, and operate, or to grant to others the right to place, construct, maintain and operate, 36 on its said right of way, poles, wires, ducts, aerial, or underground cables for the transmission of electric or other currents of any kind or voltage, for any purpose other than such commercial and public telegraphing, and that the telegraph company shall itself, at its own expense, take such steps and adopt such methods as it shall deem best to protect its wires and other property from the effects of induction or other damage or interference with use, due to the proximity of other currents. If the telegraph company is put to expense for moving or protecting its lines as above for the benefit of any party other than the railroad company, then the railroad company or the other party benefited shall assume the expense and save the telegraph company free from same.

Liability.

Ninth. It is a condition of this contract that the railroad company is not to be responsible for, and the telegraph company hereby covenants and agrees to save the railroad company harmless from and indemnify it against all loss or damage of any kind arising from injury to the person or damage to the property of any officer or employé of the telegraph company or of any contractor with the telegraph company while on the premises of the railroad company and engaged in the telegraph company's business or the contractor's business for the telegraph company or of any person to whom transportation shall have been granted by said railroad company at the request or on account of the telegraph company under this contract, and any and all damage to the property of the telegraph company while such person or property is being carried under the provisions of this agreement, caused in any manner by the act or acts of the said railroad company, its servants or agents, and whether through their negligence or not, and from any neglect or failure in the transmission or delivery of messages for any person doing business with the telegraph company, and on account of any other public telegraph business; and the telegraph company shall not be responsible for, and the railroad company agrees to indemnify and save harmless the telegraph company against any loss or damage of any kind arising from or on account of any error, failure, delay, or default in the transmission or delivery of any and all messages sent by or on behalf of the railroad company under this agreement.

37 Each party hereto shall perform with reasonable care and despatch all service hereby undertaken by it for the other.

The telegraph company expressly covenants and agrees that the joint superintendent and all other persons engaged in the work in this agreement contemplated, whether provided or paid by the telegraph company or the railroad company shall be deemed for the purposes of this contract to be the servants of the telegraph company, except when engaged in the work of transmitting messages for the railroad company, and of constructing and maintaining signal wires, cables, and telephone wires for the railroad company, provided for in section second, clause eighth, hereof; and the telegraph company assumes all liability for and agrees to indemnify and save harmless the railroad company against, of and from all loss, damage, or injury, of or to person or property sustained by the parties hereto, or either of them, or by the said servants or any of them, or by third parties, arising out of the negligent or other acts or omissions of the said servants, or out of defects in the material furnished by the telegraph company as herein provided, or otherwise, in the transaction of the business herein contemplated; provided, however, nothing in this paragraph contained shall be deemed to require the telegraph company to be liable for or to indemnify the railroad company against any loss, damage, or injury to person or property of passengers of the railroad company or to property of third persons in the hands of the railroad company for transportation, except in case of negligence of the telegraph company or its said servants.

Patent rights, etc.—Different system.

Tenth. The railroad company shall have the right to the free use of any patent rights or new discoveries or inventions that the telegraph company now owns or controls or which it may hereafter own or control as aforesaid, so far as the railroad company may deem necessary to properly carry on the business of the railroad company on said railroads as provided for herein; and in case the telegraph company shall hereafter own and substitute a different system of communication for its existing system of telegraphing, it shall furnish to the railroad company, at the option of the railroad
38 company, apparatus of such different system in substitution for the telegraph instruments which it is required to furnish under this agreement.

The telegraph company agrees to hold the railroad company harmless and indemnify it against all liability, loss, or damage which may result from patent infringement suits or actions or suits brought against the railroad company as the result of the use of any instrument, apparatus, tools, or material furnished to the railroad company by the telegraph company, under the terms of this agreement.

Telegraph system.

Eleventh. It is mutually understood and agreed that all the telegraph lines, poles, wires, and fixtures covered by this contract shall

for commercial purposes be operated as a part of the general telegraph system of the telegraph company, and shall be controlled and regulated by the telegraph company, which shall fix and determine all tariffs for the transmission of messages and all connections with other lines and interests.

Joint superintendent of telegraph—Salary.

Twelfth. It is further agreed that the management and maintenance of the telegraph lines and wires, and of the offices and operators in railroad stations, along the railroads covered by this agreement, the construction, maintenance, repair, and reconstruction of the lines and wires, and the distribution of material for use on said railroads, shall be under the supervision and control of a competent joint superintendent of telegraph, who shall be appointed by the railroad company, subject to the approval of the telegraph company, and shall be paid jointly and equally by the railroad company and the telegraph company, and whose salary shall be fixed by mutual consent the railroad company paying one-half thereof and the telegraph company the other half.

Changes.

The railroad company or the telegraph company may discharge said joint superintendent, but his successor shall only be appointed on the written consent of both parties hereto.

Said joint superintendent shall be also the district superintendent of the telegraph company in territory now embraced in the second district of the eastern division and shall (except as provided in the ninth section hereof) be equally the servant of the railroad
39 company and the telegraph company, and shall be satisfactory to both parties, and shall be subordinate to and under the control of the telegraph company's district superintendent in territory other than said second district, except as to the telegraph business of the railroad company, and so far as his duties to the railroad company will permit, he is to enforce said telegraph company's rules and regulations, and its orders in regard to the construction, maintenance, repair and reconstruction, operation, arrangement, and management of the telegraph lines and wires, and the transaction of the commercial telegraph business, and shall assist the telegraph company in such matters; it being understood and agreed that he shall cooperate with both parties hereto in giving the utmost efficiency to the working of the lines upon said railroads, and the transaction of the railroad and commercial telegraph business thereon.

Office.

The railroad company shall furnish free of charge suitable office room, light and heat the same for the occupancy of said joint superintendent.

Expenses.

The general expenses, including clerical assistance of said joint superintendent's office (other than that strictly applicable to handling reports of commercial telegraph business and to railroad business other than telegraphing), shall be divided equally between the parties hereto.

Expenses.

The expenses of said office, including traveling expenses and clerical assistance, applicable to handling reports of commercial telegraph business, shall be divided between the parties hereto in the same proportion as the receipts from commercial telegraph business at the railroad company's offices are divided.

Thirteenth. Any disagreement between the party of the first part and the party of the second part hereto as to the true construction or meaning of any of the provisions of this contract or as to the rights of either party hereunder; or any claim by either party arising hereunder, which the parties fail to adjust between themselves, shall be submitted for arbitration to a tribunal consisting of three disinterested persons, constituted as follows:

In case of any disagreement or claim each party hereto shall choose one arbitrator and the two thus chosen shall choose a third. 40 In case either party shall refuse or fail to appoint an arbitrator within ten days after receiving written notice from the other party of the matter which it desires to submit to arbitration and of its appointment of an arbitrator, the party so asking for arbitration may also appoint the second arbitrator, and the two persons so chosen shall choose a third. In the event of the failing of the two arbitrators first chosen to choose a third within ten days after the appointment of the second arbitrator and his acceptance of such appointment, either party hereto may apply to a justice of the Supreme Court of the State of New York, upon eight days' written notice to the other party for the appointment of a third arbitrator.

The tribunal so constituted shall give to the parties hereto ten days' written notice of the time and place of hearing, and shall proceed without delay to hear the evidence and allegations of the parties or of such party as may appear before them and shall determine the questions and matters submitted to them for arbitration and make their decision and award in writing. In case either party refuses or fails, upon written notice given by the arbitrators as aforesaid, to produce its evidence or present its case before them, the arbitrators may determine the questions and matters so submitted to them upon the evidence presented by the other party and such evidence as they may procure.

The decision and award of the majority of the arbitrators when made in writing and signed by them shall in every case be final and conclusive and obligatory upon the parties hereto, and each party hereto agrees to abide by and comply with every such decision and award.

It is further agreed that the determination and award of such arbitration, or a bona-fide effort to obtain it, shall be a condition precedent to any right of action with respect to any matter hereby agreed to be submitted to arbitration, and that no right of action either at law or in equity shall exist, or be invoked, with respect to any such matters until after the submission of the same to arbitration, as herein provided, and then only to enforce the decision and award of such arbitration, except in case of a bona-fide attempt to obtain such arbitration, which attempt shall have failed through no fault of the party so resorting to litigation.

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Succession—Assignment.

Fourteenth. The provisions of this agreement shall be valid and binding as between the successors in ownership or control of the property and franchises of the parties hereto respectively; but neither party hereto shall otherwise assign this contract to any other party, parties, or corporation without the written consent of the other party hereto.

Contracts in Schedule D.

Fifteenth. The contracts mentioned in Schedule D in so far as they, or any of them, may be still in force, and all other contracts with the telegraph company, if any there be, providing for the maintenance or operation of telegraph lines over railroads owned, leased, or controlled by the railroad company, are hereby cancelled and terminated, in so far as the railroad companies executing this agreement are authorized and empowered to cancel and terminate the same.

Scope.

The provisions of this agreement shall extend to all railroads now owned, leased, or controlled, and to all minor railroads in the territory aforesaid hereafter, during the life of this agreement, owned, leased, or controlled by the railroad company, and to the telegraph lines thereon;

Provided, however, that in the case of any railroad in said territory hereafter acquired by the railroad company on which there is at the time of such acquisition a telegraph line in operation, under a separate contract then in force, and not under the control of the parties hereto, this agreement shall only apply to such railroad upon the expiration or earlier termination of the said contract;

Provided, also, that the provisions of this agreement shall not extend to the line of any railroad which is not controlled by the railroad company party hereto, through ownership, lease, or stock interest;

And provided further, that in case the railroad company shall cease to own, lease, or control any minor railroad now or hereafter covered by this agreement, the obligations of the parties hereto in respect of such railroad shall cease and determine.

Term.

The provisions of this agreement shall be and continue in force from the first (1st) day of October, one thousand nine hundred and seven (1907), until the thirtieth (30th) day of September, one thousand nine hundred and twenty-eight (1928).

Additions to schedules.

Sixteenth. Schedules A, B, C, D, E, and F, hereto attached, are hereby made a part of this agreement, and there shall from time to time be added to the respective appropriate schedules any additional lines of railroad or telegraph poles or wires or other property which may become subject to the terms of this agreement; and, with the exception of said Schedule F, all of said schedules, and all entries therein, shall be verified for the purpose of being attached to and made a part of this instrument by the signatures of the presidents or vice presidents of the parties hereto respectively.

Seventeenth. Upon the expiration of this contract the telegraph company will, within the period of nine (9) months thereafter, remove its poles, wires, instruments, batteries, and all its other material or property from the premises of the railroad company, and will turn over to the railroad company in good working condition and without cost all the lines, poles, wires, and other property covered in Schedule C.

If the telegraph company fails to remove the same within such time, the railroad company shall have the right and authority to remove the same at the cost and expense of the telegraph company and to recover of the telegraph company such cost and expense in an action brought in any court of competent jurisdiction; provided, however, that the railroad company by giving written notice to the telegraph company at any time during the month of October, one thousand nine hundred and twenty-seven (1927), of its desire so to do, shall have the right and privilege of purchasing from the telegraph company at the expiration of this contract all the poles, wires, instruments, batteries, or other property or material of the telegraph company which may at the time of such expiration be upon the property of the railroad company, or such part thereof as may, in the railroad company's opinion, be necessary for the continuance of

the railroad company's telegraph or telephone service, or both, as outlined in Schedule E; and provided further, that the telegraph company by giving a written notice to the railroad company at any time during the first fifteen days of said month of October, one thousand nine hundred and twenty-seven (1927), of its desire so to do shall have the right and privilege of requiring the railroad company at the time of such expiration to purchase all the poles, wires, cross-arms, instruments, and batteries of the telegraph company which may at such time be upon the property of the railroad company. In case such notice is given by the telegraph company, the railroad company immediately upon the expiration of this

contract, shall have the right to the possession and use of all the poles, wires, instruments, batteries, or other property or material of the telegraph company which may then be upon the property of the railroad company; and in case such notice is given by the railroad company it, immediately upon the expiration of this contract, shall have the right to the possession and use of all or such part of said property as it may by said notice elect to purchase, and in either case the title shall pass to the railroad company as of the date of such expiration of contract, subject only to a lien thereon in favor of the telegraph company to secure the payment of the compensation to be made as hereinafter provided, and all and every right of the telegraph company to use or operate such property or any property upon the lands of the railroad company shall thereupon cease. The compensation to be paid in any such case for such poles, wires, instruments, and other property of the telegraph company which the railroad company desires or may be required to purchase, shall be agreed upon by the parties or, in case of their inability to agree, shall be determined by arbitration under the provisions of paragraph thirteen hereof, and in determining the value of such property proper allowance shall be made for depreciation.

It is understood and agreed that the telegraph company does not, by anything in this contract contained, waive any right of eminent domain which it may have under the statutes of any State or of the United States, except that the telegraph company expressly cove-
nants and agrees that it will not exercise or attempt to exercise
44 any right of eminent domain which it may have, for the purpose of acquiring any lands or property or interest therein, used by either party under this agreement, or which is owned or held by the railroad company, until after the expiration of this agreement, and the full performance by the telegraph company of the obligations assumed by it herein.

The Chicago and Erie Railroad Company, the New Jersey and New York Railroad Company, the Erie Terminals Railroad Company, the New York, Susquehanna and Western Railroad Company, the Wilkes-Barre and Eastern Railroad Company, and the Bath and Hammondsport Railroad Company hereby severally assent to and ratify this agreement in so far as it relates to the lines of railroad now or hereafter owned, operated, leased, or controlled by said companies, respectively.

In witness whereof the parties hereto have caused these presents to be executed by their proper officers thereto duly authorized, and their corporate seals to be hereunto affixed and attested, as of the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
[SEAL.] By R. C. CLOWRY,
President.

Attest:

J. C. WILLEVER,
Acting Secretary.

[SEAL.]

ERIE RAILROAD COMPANY,
By F. D. UNDERWOOD,
Its President.

Attest:

DAVID BOSMAN,
Secretary.

45

[SEAL.]

CHICAGO AND ERIE RAILROAD COMPANY,
By F. D. UNDERWOOD,
Its President.

Attest:

DAVID BOSMAN,
Secretary.

[SEAL.]

NEW JERSEY AND NEW YORK RAILROAD COMPANY,
By F. D. UNDERWOOD,
Its President.

Attest:

DAVID BOSMAN,
Secretary.

[SEAL.]

ERIE TERMINALS RAILROAD COMPANY,
By G. A. RICHARDSON,
Vice President.

Attest:

J. E. PACKER,
Secretary.

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[SEAL.]

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,
By F. D. UNDERWOOD,
Its President.

Attest:

DAVID BOSMAN,
Secretary.

[SEAL.]

WILKES-BARRE AND EASTERN RAILROAD COMPANY,
By F. D. UNDERWOOD,
Its President.

Attest:

DAVID BOSMAN,
Secretary.

[SEAL.]

BATH AND HAMMONDSPORT RAILROAD COMPANY,
By F. D. UNDERWOOD,
President.

Attest:

DAVID BOSMAN,
Secretary.

[47] *Erie Railroad Company, Schedule A, Mileage of railroads.*

Date.	Railroad.	From—	To—	Centre miles.
March 10, 1907..	Long Dock Company's Railroad.	Passenger station, Jersey City, N. J.	Bridge Creek, Jersey City, N. J.	2.60
" " "	Newark and Hudson Railroad.	Bergen Junction, N. J.	Newark, N. J.	5.62
" " "	Paterson, Newark and New York R.R.	Newark, N. J.	Paterson, N. J.	11.32
" " "	Bergen County Railroad	Rutherford Junction, N. J.	Ridgewood, Junction, N. J.	9.82
" " "	Arlington Railroad.....	Newark Junction, N. J.	New York and Greenwood Lake Junction, N. J.	1.15
" " "	Bergen and Dundee Railroad.	Garfield, N. J.	Passaic, N. J.	2.45
" " "	Erie Railroad.....	Piermont, N. Y.	Dunkirk, N. Y.	446.78
" " "	" "	East portal Bergen Tunnel, Jersey City, N. J.	Junction with New Jersey Junction Railroad Company's tracks.	.433
" " "	Newburgh Short Cut....	Arden Junction, N. Y.	Vails Gate Junction, N.Y.	12.64
" " "	Newburgh Branch.....	Greycourt, N. Y.	Newburgh, N. Y.	18.73
" " "	Jefferson Railroad:	West Hawley, Pa.	Honesdale, Pa.	8.19
" " "	Honedale Branch.....	Lanesboro, Pa.	Carbondale, Pa.	36.83
" " "	Moose Mountain and Carbondale R. R.	Winton, Pa.	Marshwood, Pa.	4.21
" " "	Erie Railroad.....	Hornell, N. Y.	Buffalo, N. Y.	92.16
" " "	Niagara Falls Branch.....	East Buffalo, N. Y.	Suspension Bridge, N.Y.	24.01
" " "	International Branch.....	International Junction, N. Y.	International Bridge, N. Y.	4.50
" " "	Erie and Black Rock Railroad.	Black Rock Junction, N. Y.	Black Rock, N. Y.	1.14
" " "	Rochester Division.....	Painted Post, N. Y.	Attica, N. Y. (via Avon)	109.01
" " "	Coneus Lake Railroad.....	Coneus Lake Junction, N. Y.	Lakeville, N. Y.	1.61
" " "	Buffalo and Southwestern Railroad.	Buffalo Creek Railroad Junction, Buffalo, N.Y.	Jamestown, N. Y.	66.36
" " "	" "	Erie Breaker, Pa.	Edgerton Breaker, Pa.	2.50
" " "	New York, Lake Erie and Western Coal and Railroad Co.'s R. R., Main Line.	Crawford Junction, Pa.	Johnsburg, Pa.	29.92
" " "	Toby Branch.....	Brookwayville, Pa.	Toby Mines, Pa.	12.00
" " "	Mead Run Branch.....	Brockport, Pa.	Shawmut, Pa.	2.10
" " "	Daguanahonda and Elk Branch.....	Dagusachonda, Pa.	Dagnis Mines, Pa.	5.81
" " "	West Clarion Branch.....	Brookwayville, Pa.	West Clarion Mines.....	1.99
" " "	Nypano Railroad.....	Salamanca, N. Y.	Dayton, Ohio.	387.04
" " "	Franklin Branch.....	Buchanan Junction, Pa.	Oil City, Pa.	33.78
" " "	Chicago and Erie Railroad.	Marion Junction, O.	Indiana and Illinois State line, near Hammond, Ind.	249.57
" " "	Erie and Wyoming Valley Railroad.			59.04
[45]	Penna. Co. & C.'s R.R., Hawley Brh.	Lackawaxen, Pa.	West Hawley, Pa.	15.61
March 10, 1907..	N. Y. and Greenwood Lake Ry., Main Line.	New York and Greenwood Lake Junction, N. J.	Sterling Forest, N. J.	39.26
" " "	Watchung Railway.....	Forest Hill, N. J.	Main Street, Orange, N.J.	4.16
" " "	Caldwell Railway.....	Caldwell Junction, N. J.	Caldwell, N. J.	4.50
" " "	Roseland Railway.....	Caldwell, N. J.	Essex Fells, N. J.	.947
" " "	Ringwood Branch.....	Ringwood Junction, N.J.	Ringwood, N. J.	2.78
" " "	Middletown and Crawford Railroad.	Crawford Junction, N.Y.	Pine Bush, N. Y.	10.22
" " "	Elmira State Line Railroad.	State Line Junction, N. Y.	Pennsylvania State line	6.59
" " "	Tioga Railroad.....	Pennsylvania State line.	Hoytville, Pa.	51.09
" " "	Lawrenceville Branch.	Tioga Junction, Pa.	Lawrenceville, Pa.(State line).	3.50
" " "	Morris Run Branch.....	Blossburg.....	Morris Run, Pa.	3.57
" " "	Buffalo, Bradford and Pittsburg R.R., Main Line.	Carrolltown, N. Y.	Gilesville, Pa.	26.17
" " "	West Branch.....	Bradford, Pa.	(Terminus) Nusbaum, Pa.	5.24
" " "	Paterson and Hudson R. Railroad.			
" " "	Paterson and Ramapo Railroad.	Bridge Creek, Jersey City, N. J.	Suftem, N. Y.	28.62
" " "	Union Railroad.....			

Erie Railroad Company. Schedule A. Mileage of railroads—Continued.

Date.	Railroad.	From—	To—	Centre line miles.
March 10, 1907..	Northern Railroad of New Jersey.	Bergen Junction, N. J...	Nyack, N. Y.....	26,050
" " "	Montgomery and Erie Railroad.	Goshen, N. Y.....	Montgomery, N. Y.....	10,430
" " "	Goshen and Deckertown Railroad.	Goshen, N. Y.....	Pine Island, N. Y.....	11,640
" " "	Rochester and Genesee Valley R. R.	Avon, N. Y.....	Rochester, N. Y.....	18,401
" " "	Avon, Genesee and Mount Morris R. R.	Avon, N. Y.....	Mount Morris, N. Y....	15,348
" " "	Brock Railroad.....	Brockwayville.....	Brock Mines, Pa.....	1,575
" " "	Cleveland and Mahoning Valley R. R.	Cleveland, O.....	Pennsylvania State line, including line from Youngstown, O., to Haselton, O.	80,810
" " "	Canal Branch.....	Girard, O.....	Crab Creek, Youngstown, O.	6,005
" " "	Niles and New Lisbon Railroad.	Niles, O.....	Three miles south of Lisbon, O.	36,250
" " "	Westernman Railroad....	Centre of Mill St., Sharon, Pa.	Pennsylvania State line	2,090
" " "	Sharon Railway.....	Centre of Mill St., Sharon, Pa.	Pymatuning, Pa., including New Castle Branch from Ferrona, Pa., to New Castle, Pa.	31,520
" " "	Sharpsville Branch.....	Boyce, Pa.....	Furnaces at Sharpsville, Pa.	1,550
" " "	Youngstown and Austintown Railway.	Youngstown, O.....	Leadville Mines and Branch to Manning and Tippecanoe shafts.	5,830
[49] March 10, 1907..	New Jersey and New York Railroad.	.....	.....	37,874
" " "	N. Y., Susquehanna and Western R. R.	West End, Jersey City, N. J.	Gravel Place, Pa.....	101,000
" " "	ditto (Middletown Branch).	Beaver Lake, Sussex County, N. J.	Unionville, N. Y.....	20,500
" " "	ditto (Delaware Branch)	Columbia Junction, N. J.	Delaware, N. J.....	3,000
" " "	ditto.....	Branches in Lackawanna Valley, Pa.	.....	11,590
" " "	ditto.....	Little Ferry Junction, N. J.	Edgewater, N. J.....	3,000
" " "	ditto (Paterson Branch)	Broadway, Paterson, N. J.	Straight Street, Paterson, N. J.	.750
" " "	Passaic and New York Railroad.	Passaic Junction, N. J...	Passaic, N. J.....	3,050
" " "	Lodi Branch Railroad...	Lodi, N. J.....	Lodi Junction, N. J.....	.730
" " "	Hackensack and Lodi Railroad.	Lodi Junction, N. J.....	Hackensack, N. J.....	1,410
" " "	Macopin Railroad.....	Macopin Lake Junction, N. J.	Macopin Lake, N. J.....	1,500
" " "	Wilkesbarre and Eastern Railroad.	Stroudsburg, Pa.....	Wilkesbarre, Pa.....	64,690
" " "	Westminster Branch	.....	.....	.460
" " "	Susquehanna Connecting Railroad.	Paddys Land, Pa.....	Minooka, Pa.....	9,800
" " "	Edgewater and Fort Lee Railroad.	At Edgewater, N. J.....	.....	.710
" " "	Middletown, Unionville and Water Gap R. R.	Unionville, N. Y.....	Middletown, N. Y.....	13,650
" " "	Total.....	.....	.....	2,366,571
" " "	Cleveland and Pittsburg Railroad (second track of main line).	Brady's Lake, O.....	Ravenna, O.....	3,200
" " "	Grand total, centre line miles..	.....	.....	2,369,771

Approved :

F. D. UNDERWOOD,
Pres't. Erie Railroad Company.

Approved.

R. C. CLOWRY,
Pres't. Western Union Tel. Co.

[50] Erie Railroad Company. Schedule B. Lines of telegraph poles and wires owned or controlled by the telegraph company.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
March 10, 1907	Erie R. R., N. Y. Div..	Provost St., Jersey City, N. J.	Oakland Av., Jersey City, N. J.	.55	74.80	Joint line & pole mileage.
" "	" " " "	Oakland Av., Jersey City, N. J.	West End, N.J.	.35	38.50	"
" "	" " " "	West End, N.J.	Midland Bridge, N.J.	.40	22.80	
" "	" " " "	Midland Bridge, N.J.	N. J. & N. Y. Jct., N. J.	4.90	142.10	
" "	" " " "	N. J. & N. Y. Jct., N. J.	Rutherford Jct., N. J.	1.50	39.00	
" "	" " " "	Rutherford Jct., N. J.	Passaic, N. J..	2.40	45.60	
" "	" " " "	Passaic, N. J..	Newark Jct., N. J.	3.70	62.90	
" "	" " " "	Newark Jct., N. J.	Paterson Sta., N. J.	.35	18.20	Joint line & pole mileage.
" "	" " " "	Paterson Sta., N. J.	Broadway, Paterson, N. J.	.15	10.80	"
" "	" " " "	Broadway, Paterson, N. J.	Agnew's Coal Yard, Paterson, N. J.	.30	10.80	
" "	" " " "	Agnew's Coal Yard, Paterson, N. J.	Ridgewood Jct., N. J.	4.00	96.00	
" "	" " " "	Ridgewood Jct., N. J.	Newburgh Jct., N. Y.	24.70	938.60	
" "	" " " "	Newburgh Jct., N. Y.	Turner, N. Y..	1.20	39.60	
" "	" " " "	Turner, N. Y.	Greycourt, N. Y.	7.20	230.40	
" "	" " " "	Greycourt, N. Y.	Goshen, N. Y.	5.30	174.90	
" "	" " " "	Goshen, N. Y.	Cottage St., Middletown, N. Y.	7.00	224.00	
" "	" " " "	Cottage St., Middletown, N. Y.	North St., Middletown, N. Y.	.10	9.20	Joint line & pole mileage.
" "	" " " "	North St., Middletown, N. Y.	5 poles west of Xm Tower, Middletown, N. Y.	.10	6.80	"
" "	" " " "	5 poles west of Xm Tower, Middletown, N. Y.	Navesink Bridge, N.Y.	20.20	686.80	
" "	" " " "	Navesink Bridge, N.Y.	Port Jervis, N. Y.	.35	23.80	Joint line & pole mileage.
" "	" " " "	Port Jervis, N. Y.	Germantown Bridge, N.Y.	.30	10.50	"
" "	" " " "	Germantown Bridge, N.Y.	Sparrowbush, N. Y.	1.00	66.00	"
[51] Mar. 10, 1907.	Erie R. R., Del. Div.	Sparrowbush, N. Y.	Carr's Rock, Pa.	11.40	376.20	
" "	" " " "	Carr's Rock, Pa.	Handsome Eddy, Pa.	1.95	128.70	Joint line & pole mileage.
" "	" " " "	Handsome Eddy, Pa.	Lackawaxen, Pa.	5.00	165.00	
" "	" " " "	Lackawaxen, Pa.	Callicoon, N.Y.	25.00	600.00	
" "	" " " "	Callicoon, N.Y.	Hancock Bridge, N.Y.	27.60	634.80	
" "	" " " "	Hancock Bridge, N.Y.	East End Sus- quehanna Yard, Pa.	28.10	702.50	
" "	" " " "	East End Sus- quehanna Yard, Pa.	Susquehanna Stn., Pa.	.40	20.00	Joint line & pole mileage.
" "	" " " Susq. Div.	Susquehanna Stn., Pa.	S. Q. Tower, Pa.	.40	20.80	"
" "	" " " "	S. Q. Tower, Pa.	Great Bend, Pa.	7.40	192.40	
" "	" " " "	Great Bend, Pa.	Liberty St., Bingham- ton, N. Y.	13.40	388.60	

Erie Railroad Company. Schedule B. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Susq. Div..	Liberty St., Bingham- ton, N. Y.	Bingham- ton Station, N. Y.	.45	27.00	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	Bingham- ton Station, N. Y.	.3 mile west Bingham- ton Station, N. Y.	.15	6.30	"
" "	" "	.3 mile west of Bingham- ton Station, N. Y.	East End of Owego Yard, N. Y.	21.40	440.40	
" "	" "	East End of Owego Yard, N. Y.	West End of Owego Yard, N. Y.	.25	10.50	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	West End of Owego Yard.	East End of Waverly Yard.	18.40	386.50	
" "	" "	East End of Waverly Yard.	Waverly Stn., N. Y.	.25	11.50	Joint line $\frac{1}{2}$ pole mileage
" "	" "	Waverly Stn., N. Y.	Miller St., El- mira, N. Y.	16.10	338.10	
" "	" "	Miller St., El- mira, N. Y.	Water St., El- mira, N. Y.	1.00	24.00	
" "	" "	Water St., El- mira, N. Y.	Elmira Stn., N. Y.	.25	17.50	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	Elmira Sta- tion, N. Y.	Washington Avenue Bridge, El- mira, N. Y.	.25	12.00	"
[82] Mar. 10, 1907.	Erie R. R., Susq. Div..	Washington Avenue Bridge, El- mira, N. Y.	4 miles east of Corning, N. Y.	12.90	258.00	
" "	" "	4 miles east of Corning, N. Y.	East End Corning Yard, N. Y.	3.70	77.70	
" "	" "	East End Corning Yard.	Corning De- pot, N. Y.	.15	6.30	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	Corning De- pot, N. Y.	West End Corning Yard, N. Y.	.35	15.40	"
" "	" "	West End Corning Yard, N. Y.	Painted Post, N. Y.	1.20	26.40	
" "	" "	Painted Post, N. Y.	East End Hornell Yard, N. Y.	37.70	640.90	
" "	" "	East End Hornell Yard, N. Y.	Hornell Stn., N. Y.	.75	25.50	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	Hornell Stn., N. Y.	Buff. Div. Jct., Hornell, N. Y.	.85	30.60	"
" "	" "	Painted Post, N. Y.	Bath, N. Y....	9.20	92.00	"
" "	" "	Bath, N. Y....	Kanona, N. Y.	1.90	15.20	Joint line $\frac{1}{2}$ pole mileage.
" "	" "	Kanona, N. Y.	Wayland, N. Y.	10.85	65.10	"
" "	" "	Wayland, N. Y.	Rochester, N. Y.	24.50	98.00	"
" "	" "	Avon, N. Y....	Mt. Morris, N. Y.	15.30	15.30	
" "	" "	Avon, N. Y....	N. Y. Central Crossing, 2 miles east Batavia, N. Y.	.....	22.20	R. R. Co. owns poles.
" "	Bath & Hmdspt. R. R.	Bath, N. Y....	Hammonds- port, N. Y.	9.00	10.00	
" "	Erie R. R., Buff. Div.	Buff. Div. Jct., Hornell, N. Y.	William St., Buffalo, N. Y.	86.80	694.40	
" "	" "	William St., Buffalo, N. Y.	Smith St., Buffalo, N. Y.	1.35	21.60	Joint line $\frac{1}{2}$ pole mileage.
" "	Buff. & S. Wstn. R. R.	Buff. Creek Jct., N. Y.	West Seneca, N. Y.	.....	26.40	N. Y. C. & S. L. poles.

Erie Railroad Company. Schedule B. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Buff. & S. Wstn. R. R.	West Seneca, N. Y.	Abbotts Road, N. Y.	4.40	35.20	
" "	" " " "	Abbotts Road, N. Y.	Hamburg, N. Y.	2.70	13.50	
" "	" " " "	Hamburg, N. Y.	Dayton Jct., N. Y.	24.60	73.80	
" "	" " " "	Dayton Jct., N. Y.	Waterboro, N. Y.	20.90	41.80	
" "	Erie R. R., Ally. Div.	Buff. Div. Jct., N. Y.	Wellsville, N. Y.	12.25	245.00	Joint line & pole mileage.
" "	" " " "	Wellsville, N. Y.	Carrollton, N. Y.	24.85	447.30	"
[53] Mar. 10, 1907.	Erie R. R., Ally. Div.	Carrollton, N. Y.	Salamanca, N. Y.	2.70	59.40	Joint line & pole mileage.
" "	" " " "	Salamanca, N. Y.	W. Salamanca, N. Y.	.90	16.20	"
" "	" " " "	W. Salamanca, N. Y.	Dayton, N. Y.	11.50	46.00	"
" "	" " " "	Dayton, N. Y.	Dunkirk, N. Y.	11.00	22.00	"
" "	" " Brd'd. Div.	Carrollton, N. Y.	Riverside, Pa.	1.10	8.80	"
" "	" " " "	Riverside, Pa.	One-half mile west of Tu- na, Pa.	3.40	54.40	"
" "	" " " "	One-half mile west of Tu- na, Pa.	Bradford, Pa.	1.35	37.80	"
" "	" " " "	Bradford, Pa.	Johnsonburg, Pa.	.....	42.00	R. R. Co. owns poles.
" "	" " " "	Crawford Jct., West End, N. J.	Alton, Pa.	.....	3.40	"
" "	" " " "	" " " "	One-half mile east of G. L. Jct., N. J.	.....	2.40	"
" "	" " " "	" " " "	Newark, N. J.	.....	13.50	"
" "	" " " "	Newark, N. J.	Belleville, N. J.	.95	11.40	Joint line & pole mileage.
" "	" " " "	Belleville, N. J.	D. L. & W. Bridge, N. J.	3.60	36.00	"
" "	" " " "	" " " "	Newark Jct., N. J.	.85	15.30	"
" "	Brgn. Co. Br.	Rutherford Jct., N. J.	Oil Station, N. J.	.....	7.60	R. R. Co. owns poles.
" "	" " " "	Oil Station, N. J.	Garfield, N. J.	.....	1.00	"
" "	" " " "	Rutherford Jct., N. J.	Passaic Jct., N. J.	4.90	34.30	
" "	" " " "	Passaic Jct., N. J.	Ridge wood, N. J.	4.90	68.60	
" "	" " Weehkn. Br.	First St., Ho- boken, N. J.	Weehawken, N. J.	.....	4.20	West Shore wires; R. R. Co. owns poles.
" "	" " " "	Newburgh Jct., N. Y.	Vails Gate Jct., N. Y.	12.60	88.20	
" "	" " " "	Vails Gate Jct., N. Y.	W. Newburgh, N. Y.	3.20	25.60	
" "	" " " "	W. Newburgh, N. Y.	West Shore Tunnel, N. Y.	.90	4.50	
" "	" " " "	West Shore Tunnel, N. Y.	S. William St., Newburgh, N. Y.	.50	4.00	
" "	" " " "	S. William St., Newburgh, N. Y.	Erie Depot, Newburgh, N. Y.	.40	4.80	
" "	" " " "	Greycourt, N. Y.	Vails Gate Jct., N. Y.	.....	27.60	R. R. Co. owns poles.
" "	" " Mntgmy. Br.	Goshen, N. Y.	Montgomery, N. Y.	.....	10.20	"
" "	" " Middletn. & Crawford Br.	Crawford Jct., N. Y.	Pine Bush, N. Y.	.....	10.20	"
[54] Mar. 10, 1907.	Erie R. R., Wyo. Div.	Lackawaxen, Pa.	West Hawley, Pa.	15.70	141.30	
" "	" " " "	West Hawley, Pa.	No. 6 Jct., Pa.	33.80	270.40	

Erie Railroad Company. Schedule B. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Wyo. Div.	No. 6 Jct., Pa.	Dunmore, Pa.	.....	1.00	R. R. Co. owns poles.
" "	" " " "	West Jct., Pa.	No. 7 Jct., Pittston, Pa.	12.30	36.90	
" "	" " Lake Ariel Branch	West Lake Jct., Pa.	Lake Ariel, Pa.	1.40	.....	R. R. Co. owns wires.
" "	" " Honesdale Branch	West Hawley, Pa.	Honesdale, Pa.	8.00	9.00	
" "	Nthn. R. R. of N. J.	Midland Bridge, N. J.	Homestead, N. J.	2.50	32.50	
" "	" " " "	Homestead, N. J.	New Durham, N. J.	.80	7.20	
" "	" " " "	New Durham, N. J.	.3 mile west Granton Jct., N. J.	1.50	15.00	
" "	" " " "	.3 mile west Granton Jct., N. J.	Nyack, N. Y.	21.20	63.60	
" "	N. J. & N. Y. R. R.	N. J. & N. Y. Jct., N. J.	Nanuet Jct., N. Y.	20.70	41.40	
" "	" " " "	Spring Valley, N. Y.	West Shore R. R. Jct., N. Y.	9.60	19.20	
" "	" " " "	West Shore R. R. Jct., N. Y.	West Haverstraw, N. Y.	1.40	1.40	
" "	" " " "	Nanuet Jct., N. Y.	Spring Valley, N. Y.	.....	4.60	R. R. Co. owns poles.
" "	Piermont Br. N. Y. & G. L. R. R.	Greenwood Lake Jct., N. J.	Midvale, N. J.	27.20	27.20	
" "	" " " "	Midvale, N. J.	Ringwood Jct., N. J.	3.60	10.80	
" "	" " " "	Ringwood Jct., N. J.	Sterling Forest, N. J.	9.00	9.00	
" "	N. Y. & G. L. R. R., Ringwood Br.	Ringwood Jct., N. J.	Ringwood, N. J.	2.60	.....	Wires owned by R. R. Co.
" "	N. Y. & G. L. R. R., Orange Br.	Forest Hill, N. J.	West Orange, N. J.	4.00	.....
" "	N. Y. & G. L. R. R., Caldwell Br.	Great Notch, N. J.	Essex Fells, N. J.	5.70	11.40	
" "	N. Y., S. & W. R. R.	West End, N. J.	Midland Bridge, N. J.	.40	.80	
" "	" " " "	Midland Bridge, N. J.	Jct. Pole west of County Road, N. J.	.40	1.20	2d line.
" "	" " " "	Midland Bridge, N. J.	Jct. Pole west of County Road, N. J.	.40	6.00	
[55] Mar. 10, 1907.	N. Y., S. & W. R. R.	Jct., pole west of county road.	New Durham, N. J.	2.90	52.20	
" "	" " " "	New Durham, N. J.	Granton, N. J.	1.00	21.00	
" "	" " " "	Granton, N. J.	.3 mile west of Granton Jct., N. J.	.60	13.20	
" "	" " " "	.3 mile west of Granton Jct., N. J.	.5 mile west of Granton Jct., N. J.	.20	5.80	
" "	" " " "	.5 mile west of Granton Jct., N. J.	Little Ferry Jct., N. J.	1.30	27.30	
" "	" " " "	.5 mile west of Granton Jct., N. J.	Little Ferry Jct., N. J.	1.30	10.40	2d line.
" "	" " " "	Little Ferry Jct., N. J.	Little Ferry Station, N. J.	1.10	31.90	
" "	" " " "	Edgewater Bridge, N. J.	West end Tunnel, N. J.	1.00	4.00	Add 1 mile for cable mileage in tunnel.
" "	" " " "	Little Ferry Station, N. J.	Rochelle Park, N. J.	5.00	105.00	
" "	" " " "	Little Ferry Station, N. J.	Rochelle Park, N. J.	5.00	40.00	2d line.
" "	" " " "	Rochelle Park, N. J.	Passaic Jct., N. J.	1.50	43.50	

Erie Railroad Company. Schedule B. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	N. Y., S. & W. R. R.	Passaic Jct., N. J.	Broadway, Paterson, N. J.	2.90	40.60	
" "	" " " " "	Passaic Jct., N. J.	Broadway, Paterson, N. J.	2.90	17.40	2d line.
" "	" " " " "	Broadway, Paterson, N. J.	Paterson City, N. J.	.70	9.10	
" "	" " " " "	Broadway, Paterson, N. J.	Beaver Lake, N. J.	33.40	300.60	
" "	" " " " "	Beaver Lake, N. J.	Cottage St., Middletown, N. Y.	34.30	274.40	
" "	" " " " "	Beaver Lake, N. J.	Sparta, N. J...	6.30	18.90	
" "	" " " " "	Sparta, N. J...	Swartswood Jct., N. J.	10.80	10.80	
" "	" " " " "	Swartswood Jct., N. J.	Hainesburg Jct., N. J.	18.50	37.00	
" "	" " " " "	Hainesburg Jct., N. J.	Wilkes-Barre, Pa.	76.20	76.20	
" "	N. Y., S. & W. R. R., Passaic Br.	Passaic Jct., N. J.	Passaic, N. J.	3.00	12.00	
" "	N. Y., S. & W. R. R., Delaware Br.	Columbia, N. J.	Delaware, N. J.	3.80	3.80	
[56] Mar. 10, 1907.	N. Y., S. & W. R. R., S. C. R. R. Br.	S. C. R. R. Jct., Pa.	Minooka, Pa.	7.70	.....	R. R. Co. owns wires.
" "	Erie R. R., Meadville Div.	West, Sala- manca, N. Y.	Waterboro, N. Y.	10.70	149.80	Joint line & pole mileage.
" "	" " " " "	Waterboro, N. Y.	Falconer Jct., N. Y.	3.55	63.90	"
" "	" " " " "	Falconer Jct., N. Y.	James town, N. Y.	1.75	38.50	"
" "	" " " " "	James town, N. Y.	Corry, Pa.....	13.55	271.00	"
" "	" " " " "	Corry, Pa.....	Union City, Pa.	5.70	114.00	"
" "	" " " " "	Union City, Pa.	Cambridge Springs, Pa.	8.00	144.00	"
" "	" " " " "	Cambridge Springs, Pa.	Meadville, Pa.	7.10	142.00	"
" "	" " " " "	Meadville, Pa.	Buchanan, Pa.	1.45	34.80	"
" "	" " " " "	Buchanan, Pa.	.4 mile west of Pymatuning Pa.	15.65	281.70	"
" "	" " " " "	.4 mile west of Pymatuning, Pa.	Warren (main line), Ohio.	12.35	197.60	"
" "	" " " " "	Warren (main line), Ohio.	East end of Leavittsburg Yard, Ohio.	1.05	14.70	"
" "	" " " " "	West end of Leavittsburg Yard, Ohio.	Kent, Ohio....	13.25	318.00	"
" "	" " Frnkin. Br.	Buchanan, Pa.	Franklin, Pa.	12.40	73.40	Joint line & pole mileage.
" "	" " Mahng. Div.	.4 mile west of Pymatuning, Pa.	Sharon, Pa....	.....	7.90	R. R. Co. owns poles.
" "	" " " " "	Sharon, Pa....	Lake Shore Crossing .7 mile east of Youngs- town, Ohio.	.....	39.00	"
" "	" " " " "	Lake Shore Crossing .7 mile east of Youngs- town, Ohio.	Himrods Tower, Youngs- town, Ohio.	.....	2.80	"
" "	" " " " "	Himrods Tower, Youngs- town, Ohio.	Youngstown Station, Ohio.	.30	7.20	
" "	" " " " "	Youngstown Station, Ohio.	Westlake Crossing, Ohio.	.30	1.80	

Erie Railroad Company. Schedule B. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Mahng. Div.	Westlake Crossing, Ohio.	Niles, Ohio....	8.60	137.60	
[57] Mar. 10, 1907.	Erie R. R., Mahng. Div.	Niles, Ohio ...	Pennsylvania Crossing 1.6 miles east of Warren Mahng. Div.	3.50	52.50	
" "	" " " "	Pennsylvania Crossing 1.6 miles east of Warren Mahng. Div.	Warren Mahng. D.	1.60	28.80	
" "	" " " "	Warren Mahng. Div.	East end Leavittsburg Yard, Ohio.	2.20	35.20	
" "	" " " "	East end Leavittsburg Yard, Ohio.	Leavittsburg, Ohio.	1.00	23.00	
" "	" " " "	Leavittsburg, Ohio.	S. N. Tower .5 mile west Leavittsburg, Ohio.	.50	15.00	
" "	" " " "	S. N. Tower .5 mile west Leavittsburg, Ohio.	Newburgh, Ohio.	43.30	736.10	
" "	" " " "	Newburgh, Ohio.	Broadway, Cleveland, Ohio.	3.80	64.60	
" "	" " " "	Niles, Ohio....	Lisbon, Ohio.	33.20	35.20	
" "	Niles & Lisbon Branch. Erie R. R., Cin. Div.	Kent, Ohio....	W. & L. E. Crossing, Ohio.	.50	12.00	Joint Line $\frac{1}{2}$ pole mileage
" "	" " " "	W. & L. E. Crossing, Ohio.	A. K. Tower, Akron, Ohio.	4.75	76.00	"
" "	" " " "	A. K. Tower, Akron, Ohio.	Burbank, Ohio.	14.90	208.60	"
" "	" " " "	Burbank, Ohio.	Mansfield, Ohio.	18.45	296.20	"
" "	" " " "	Mansfield, Ohio.	Big Four Crossing east of Gallon, Ohio.	7.65	153.00	Additional mile wire $\frac{1}{2}$ 107 loop, Burbank. Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	Big Four Crossing east of Gallon, Ohio.	Marion, Ohio.	10.55	211.00	"
" "	" " " "	Marion, Ohio.	Dayton, Ohio.	41.85	167.40	"
[58] Mar. 10, 1907.	Chicago & Erie R. R., Lima Div.	Marion, Ohio.	Kn. Tower, Kenton, Ohio.	24.20	222.20	4.4 additional wire mileage $\frac{1}{2}$ loop 115 at Marion.
" "	Chicago & Erie R. R., Lima Div.	Kn. Tower, Kenton, Ohio.	Lima, Ohio...	27.70	332.40	
" "	Chicago & Erie R. R., Lima Div.	Lima, Ohio...	Decatur, Ind..	44.10	485.10	
" "	Chicago & Erie R. R., Lima Div.	Decatur, Ind..	Kingsland, Ind.	13.30	172.90	
" "	Chicago & Erie R. R., Lima Div.	Kingsland, Ind.	Huntington, Ind.	17.30	190.30	
" "	Chicago & Erie R. R., Chicago Div.	Huntington, Ind.	Hammond, Ind.	122.00	1,342.00	
" "	Chicago & Erie R. R., Chicago Div.	Hammond, Ind.	State Line, Ind.	1.00	11.00	
Total....				1,534.80	19,905.10	

Approved :

Approved :

R. C. CLOWRY,
Pres't. Western Union Tel. Co.
F. D. UNDERWOOD,
Pres't. Erie Railroad Company.

[59] Erie Railroad Company. Schedule C. Lines of telegraph poles and wires owned or controlled by the railroad company.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Weehawken Branch.	E. End Bergen Tunnel, N.J.	Weehawken, N. J.	2.80	11.20	
" "	Erie R. R., N. Y. Div..	Erie Station, Jersey City, N. J.	Provost St., Jersey City, N. J.	.40	11.20	
" "	" " " "	Provost St., Jersey City, N. J.	E. End Bergen Tunnel, N.J.	.25	10.00	Joint Line 1/2 pole mileage.
" "	" " " "	E. End Bergen Tunnel, N.J.	West End, N.J.	.65	20.80	"
" "	" " " "	West End, N.J.	Midland Bdge., N. J.	.40	4.40	
" "	" " " "	Midland Bridge, N.J.	N. J. & N. Y. Jct., N. J.	4.90	39.20	
" "	" " " "	N. J. & N. Y. Jct., N. J.	Rutherford Jct., N. J.	1.50	10.50	
" "	" " " "	Rutherford Jct., N. J.	Newark Jct., N. J.	6.10	24.40	
" "	" " " "	Newark Jct., N. J.	Paterson Stn., N. J.	.35	4.90	Joint Line 1/2 pole mileage.
" "	" " " "	Paterson Stn., N. J.	B'way, Paterson, N. J.	.15	1.80	
" "	" " " "	B'way, Paterson, N. J.	Ridgewood Jct., N. J.	4.30	25.80	
" "	" " " "	Ridgewood Jct., N. J.	Newburgh Jct., N. Y.	24.70	247.00	
" "	" " " "	Newburgh Jct., N. Y.	Turner, N. Y.	1.20	12.00	
" "	" " " "	Turner, N. Y.	Greycourt, N. Y.	7.20	50.40	
" "	" " " "	Greycourt, N. Y.	Cottage St., Middletown, N. Y.	12.30	110.70	
" "	" " " "	Cottage St., Middletown, N. Y.	5 poles west of Xm Tower, Middletown, N. Y.	.20	4.00	Joint Line 1/2 pole mileage.
" "	" " " "	5 poles west of Xm Tower, Middletown, N. Y.	Navesink, Bdge., N.Y.	20.20	181.80	
" "	" " " "	Navesink Bdge., N. Y.	Port Jervis, N. Y.	.35	6.30	Joint Line 1/2 pole mileage.
" "	" " " "	Port Jervis, N. Y.	"C" office, Buckleys, N. Y.	.80	24.00	"
" "	" " " "	"C" office, Buckleys, N. Y.	Sparrowbush, N. Y.	.50	11.00	"
" "	" " Del. Div..	Sparrowbush, N. Y.	Carr's Rock, Pa.	11.40	102.60	
" "	" " " "	Carr's Rock, Pa.	Handsome Eddy, Pa.	1.95	35.10	Joint Line 1/2 pole mileage.
" "	" " " "	Handsome Eddy, Pa.	Lackawaxen, Pa.	5.00	45.00	
" "	" " " "	Lackawaxen, Pa.	Lanesboro, Pa.	79.70	557.90	
" "	" " " "	Lanesboro, Pa.	E. End Susquehanna Yard, Pa.	1.00	9.00	
[60]						
Mar. 10, 1907.	Erie R. R., Del. Div...	East End Susquehanna Yard, Pa.	Susquehanna Stn., Pa.	.40	7.20	Joint Line 1/2 pole mileage.
" "	" " Susq. Div.	Susquehanna Stn., Pa.	S. Q. Tower, Susquehanna, Pa.	.40	7.20	"
" "	" " " "	S. Q. Tower, Susq., Pa.	S. R. Tower, Susquehanna, Pa.	1.00	9.00	
" "	" " Jeff's'n Div.	Lanesboro, Pa.	W. Carbon-dale, Pa.	36.40	72.80	
" "	" " " "	W. Carbon-dale, Pa.	Jessup, Pa.	.....	10.50	D. & H. R. R. poles.
" "	" " Wyo. Div	Jessup, Pa.	Rock Jct., Pa.	6.90	6.90	
" "	" " " "	Lackawaxen, Pa.	W. Hawley, Pa.	15.70	31.40	
" "	" " " "	West Hawley, Pa.	Honesdale, Pa.	.....	18.00	W. U. Tel. Co. owns poles.

Erie Railroad Company. Schedule C. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Wyo. Div.	West Hawley, Pa.	Saco, Pa.	.....	63.00	W. U. Tel. Co. owns poles.
" "	" " " "	West Lake Jct., Pa.	Lake Ariel, Pa.	.....	5.60	"
" "	" " " "	Saco, Pa.	Rock Jct., Pa.	.....	21.60	"
" "	" " " "	Rock Jct., Pa.	No. 6 Jct., Pa.	.....	6.00	"
" "	" " " "	No. 6 Jct., Pa.	Dunmore, Pa.	.....	0.50	"
" "	" " " "	Dunmore, Pa.	Scranton, Pa.	.....	1.90	"
" "	" " " "	West Jct., Pa.	No. 7 Jct., Pitts'n, Pa.	.....	12.30	W. U. Tel. Co. owns poles.
" "	" " " "New'k Beh.	West End, N. J.	N. Y. & G. L. Jct., N. J.	.....	1.70	"
" "	" " " "	N. Y. & G. L. Jn., N. J.	Newark, N. J.	.....	4.00	"
" "	" " " "	Newark, N. J.	Newark Jct., N. J.	.....	5.40	"
" "	N. Y. & G. L. R. R.	N. Y. & G. L. Jn., N. J.	Sterling For- est, N. J.	.....	39.80	Joint Line 4 pole mileage. W. U. Tel. Co. owns poles.
" "	N. Y. & G. L. R. R., Orange Branch.	Forest Hill, N. J.	West Orange, N. J.	.....	8.00	"
" "	N. Y. & G. L. R. R., Caldwell Branch.	Great Notch, N. J.	Essex Fells, N. J.	.....	11.40	"
" "	N. Y. & G. L. R. R., Ringwood Branch.	Ringwood, Jct., N. J.	Ringwood, N. J.	.....	5.20	"
" "	North'n R. R. of N. J.	Middleland Bridge, N. J.	3 mile west of Granton Jct., N. J.	.....	9.60	"
" "	" " " "	3 mile west of Granton Jct., N. J.	Edgewater, Bdg., N. J.	.....	3.00	"
" "	" " " "	Edgewater, Bdg., N. J.	Sparkill, N. Y.	.....	15.40	"
" "	" " " "	Sparkill, N. Y.	Nyack, N. Y.	.....	9.00	"
" "	N. J. & N. Y. R. R.	N. J. & N. Y. Jct.	Nanuet Jct., N. Y.	.....	20.70	"
" "	" " " "	Spring Valley, N. Y.	Haverstraw, N. Y.	.....	11.00	"
[61] Mar. 10, 1907.	N. J. & N. Y. R. R., Piermont Branch.	Sparkill, N. Y.	Nanuet Jct., N. Y.	6.90	6.90	
" "	N. J. & N. Y. R. R., Piermont Branch.	Nanuet Jct., N. Y.	Spring Valley, N. Y.	2.30	4.60	
" "	N. J. & N. Y. R. R., Piermont Branch.	Spring Valley, N. Y.	Suffern, N. Y.	6.70	6.70	
" "	Erie R. R., Bergen Co. Branch.	Rutherford Jct., N. J.	Garfield, N. J.	2.40	7.20	
" "	" " Bergen Co. Branch.	Garfield, N. J.	Passaic Jct., N. J.	2.50	12.50	
" "	" " Bergen Co. Branch.	Passaic Jct., N. J.	Ridge wood Jct., N. J.	4.90	29.40	
" "	" " Newburgh Short Cut.	Newburgh Jct., N. Y.	Vails Gate Jct., N. Y.	.....	25.20	W. U. Tel. Co. owns poles.
" "	" " Newburgh Branch.	Greycourt N. Y.	Vails Gate Jct., N. Y.	13.80	27.60	
" "	" " Newburgh Branch.	Vails Gate, Jct., N. Y.	W. Newburgh, N. Y.	3.20	12.80	
" "	" " Newburgh Branch.	W. Newburgh, N. Y.	Newburgh, N. Y.	.....	7.20	W. U. Tel. Co. owns poles.
" "	" " Montgom- ery Branch.	Goshen, N. Y.	Montgomery, N. Y.	10.20	10.20	
" "	" " Montgom- ery Branch.	Campbell Hall Jct., N. Y.	Maybrook, N. Y.	.....	5.60	C. N. E. R. R. poles.
" "	" " Pine Is- land Branch.	Goshen, N. Y.	Pine Island, N. Y.	11.80	11.80	"
" "	Erie R. R., Middlet'n & Crawford Beh.	Cottage St., Middletown, N. Y.	Crawford Jct., N. Y.	.....	3.20	N. Y., O. & W. poles.
" "	Erie R. R., Middlet'n & Crawford Beh.	Crawford Jct., N. Y.	Pine Bush, N. Y.	10.20	10.20	
" "	N. Y., S. & W. R. R.	P. R. R. Jct., N. J.	Jct. pole west of County Road, N. J.	.....	1.60	W. U. Tel. Co. owns poles.
" "	" " " "	Middleland Bridge, N. J.	Jct. pole west of County Road, N. J.	.....	.40	"
" "	" " " "	Junct. pole west of County Rd., N. J.	3 mile west of Granton Jct., N. J.	.....	12.60	"

Erie Railroad Company. Schedule C. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	N. Y., S. & W. R. R.	.3 mile west of Granton Jct., N. J.	Edge water Bdg., N. J.	.....	2.00	W. U. Tel. Co. owns poles.
" "	" " " "	Edge water Bdg., N. J.	N. R. R. of N. J. Bridge, N. J.	.....	1.80	"
[62] Mar. 10, 1907.	N. Y., S. & W. R. R.	N. R. R. of N. J. Bridge, N. J.	W. end Edge- water Tun- nel, N. J.	.....	7.00	W. U. Tel. Co. owns poles.
" "	" " " "	Edge water Bridge, N. J.	Little Ferry Jct., N. J.	.....	2.50	"
" "	" " " "	Little Ferry Jct., N. J.	Passaic Jct., N. J.	.....	22.80	"
" "	" " " "	Passaic Jct., N. J.	Beaver Lake, N. J.	.....	72.60	"
" "	" " " "	B'way, Pater- son, N. J.	Paterson City, N. J.	.....	1.40	"
" "	" " " "	Beaver Lake, N. J.	Cottage St., Middletown, N. Y.	.....	34.30	"
" "	" " " "	Beaver Lake, N. J.	Minooka, Pa.	.....	108.50	"
" "	" " " "	S. R. R. Jct., Pa.	Yatesville, Pa.	.....	9.20	"
" "	Erie R. R., Susq. Div.	S. R. Tower, Susquehanna, Pa.	Liberty St., Binghamton, N. Y.	19.80	138.60	
" "	" " " "	Liberty St., Binghamton, N. Y.	.3 mile west Binghamton, N. Y.	.60	8.40	Joint Line $\frac{1}{2}$ pole mileage.
" "	" " " "	.3 mile west Binghamton Stn., N. Y.	E. end Owego Yard, N. Y.	21.40	149.80	
" "	" " " "	E. end Owego Yard, N. Y.	W. end Owego Yard, N. Y.	.25	3.50	Joint Line $\frac{1}{2}$ pole mileage.
" "	" " " "	W. end Owego Yard, N. Y.	E. end Wa- verly Yd., N. Y.	18.40	128.80	
" "	" " " "	E. end Wa- verly Yd., N. Y.	Waverly Stn., N. Y.	.25	3.50	Joint Line $\frac{1}{2}$ pole mileage.
" "	" " " "	Waverly Stn., N. Y.	Miller St., El- mira, N. Y.	16.10	112.70	
" "	" " " "	Miller St., El- mira, N. Y.	Water St., El- mira, N. Y.	1.00	9.00	
" "	" " " "	Water St., El- mira, N. Y.	Elmira Stn., N. Y.	.25	4.50	Joint Line $\frac{1}{2}$ pole mileage.
" "	" " " "	Elmira Stn., N. Y.	Washington Ave. Bdg., Elmira, N. Y.	.25	4.00	"
" "	" " " "	Washington Avenue Bdg., El- mira, N. Y.	E. end Corn- ing Yd., N. Y.	16.60	132.80	
" "	" " " "	East end Corn- ing Yard, N. Y.	Corning Stn., N. Y.	.15	2.40	Joint Line $\frac{1}{2}$ pole mileage.
[63] Mar. 10, 1907	Erie R. R., Susq. Div.	Corning Stn., N. Y.	W. end Corn- ing Yd., N. Y.	.35	6.30	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	West end Corn- ing Yard, N. Y.	Painted Post, N. Y.	1.20	10.80	
" "	" " " "	Painted Post, N. Y.	E. end Hornell Yard, N. Y.	37.70	301.60	
" "	" " " "	East end Horn- nell Yard, N. Y.	Hornell Stn., N. Y.	.75	12.00	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	Hornell Stn., N. Y.	Buffalo Div. Jct., Hornell, N. Y.	.85	15.30	"
" "	" " Tioga Div.	Miller St., El- mira, N. Y.	Hoytville, Pa.	59.40	59.40	
" "	" " " "	Tioga Jct., Pa.	Lawrenceville, Pa.	3.40	6.80	
" "	" " Roch'r Div.	Painted Post, N. Y.	Avon, N. Y.	37.10	74.20	Joint line $\frac{1}{2}$ pole mileage.

Erie Railroad Company. Schedule C. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R.R., Roch'r Div.	Conesus Lake Jct., N. Y.	Lakeville, N. Y.	1.25	2.50	
" "	" " " "	Avon, N. Y. . .	Rochester, N. Y.	9.35	56.10	Joint line $\frac{1}{2}$ pole mileage.
" "	" " Mt. Morris Branch.	Avon, N. Y. . .	Mt. Morris, N. Y.	.....	15.30	W. U. Tel. Co. owns poles.
" "	" " Attica Br.	Avon, N. Y. . .	Attica, N. Y. .	34.90	34.90	
" "	" " Buff. Div..	Buffalo Div. Jct., Hornell, N. Y.	Attica, N. Y. .	59.30	177.90	
" "	" " " "	Attica, N. Y. .	William St., Buffalo, N. Y.	27.50	110.00	
" "	" " " "	William St., Buffalo, N. Y.	East Buffalo, N. Y.	.65	5.20	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	East Buffalo, N. Y.	Smith St., Bfo., N. Y.	.70	8.40	
" "	" " " "	Smith St., Bfo., N. Y.	Buffalo Stn., N. Y.	.....	11.70	On W. U. Tel. Co.'s poles.
" "	" " " "	Loop lines in Buffalo Yard, N. Y.	.....	1.90	12.60	
" "	" " " "	East Buffalo, N. Y.	Suspn. Bridge, N. Y.	22.80	45.60	
" "	" " " "	Internal. Jct., N. Y.	Black Rock, N. Y.	4.30	8.60	
[64] Mar. 10, 1907	Erie R. R., Niagara Falls Br.	Falls Jct., N. Y.	Niagara Falls, N. Y.	.70	2.80	
" "	" " " "	Smith St., Buf- falo, N. Y.	Buffalo Creek Jct., N. Y.	.....	2.60	On B. C. R. R. poles.
" "	" " " "	Bfo. Creek Jct., N. Y.	West Seneca, N. Y.	.....	6.60	On N. Y. C. & St. L. poles.
" "	" " B. & S. W. R. R.	West Seneca, N. Y.	Waterboro, N. Y.	.....	105.20	W. U. Tel. Co. owns poles.
" "	" " Erie R. R., Allegany Div.	Buffalo Div. Jct., Hornell, N. Y.	Carrollton, N. Y.	37.10	445.20	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	Carrollton, N. Y.	Salamanca, N. Y.	2.70	37.80	"
" "	" " " "	Salamanca, N. Y.	W. Salamanca, N. Y.	.90	12.60	"
" "	" " " "	W. Salamanca, N. Y.	Dunkirk, N. Y.	22.60	90.00	"
" "	" " " "	Carrollton, N. Y.	Bradford, Pa..	5.85	35.10	"
" "	" " " "	Bradford, Pa..	Johnsonburg, Pa.	42.00	42.00	
" "	" " " "	Johnsonburg Pa.	Daguschahonda, Pa.	.....	10.50	On poles of P. & E. R. R.
" "	" " " "	Daguschahonda, Pa.	Dagus Mines, Pa.	.....	5.50	On poles of Bell Telephone Co.
" "	" " " "	Dagus Mines, Pa.	Toby Mines, Pa.	.....	2.00	On poles of Bell Telephone Co. on highway.
" "	" " " "	Toby Mines, Pa.	Brockwayville, Pa.	.....	24.00	Bell Telephone Co. poles on R. R. right of way.
" "	" " " "	Crawford Jct., Pa.	Alton, Pa.	1.70	3.40	
" "	" " " "	W. Salamanca, N. Y.	Waterboro, N. Y.	10.70	107.00	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	Waterboro, Pa.	Jamestown, N. Y.	5.30	74.20	"
" "	" " " "	Jamestown, N. Y.	Corry, Pa.	13.55	135.50	"
" "	" " " "	Corry, Pa.	Meadville, Pa.	20.80	249.60	"
" "	" " " "	Meadville, Pa.	Buchanan, Pa.	1.45	21.90	"
[65] Mar. 10, 1907.	Erie R.R., M'dv'le Dv.	Buchanan, Pa.	Shenango, Pa.	12.70	132.40	Note: Includ- ing 1.6 miles in "35's" loop.
" "	" " " "	Shenango, Pa.	.4 mile west of P y in a tun- ing, Pa.	2.85	46.30	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	.4 mile west of P y in a tun- ing, Pa.	Johnsons, Ohio	6.65	53.20	"

Erie Railroad Company. Schedule C. Lines of telegraph poles, etc.—Contd.

Date.	Railroad.	From—	To—	Pole mileage, single line.	Wire mileage, single wire.	Remarks.
Mar. 10, 1907.	Erie R.R., M'd'v'le Div.	Johnsons, Ohio	East end of Leavittsburg Yard, Ohio.	6.75	40.50	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	W. end Leavittsburg Yard, Ohio.	Kent, Ohio...	13.25	106.00	"
" "	" " F'klin Beh.	Buchanan, Pa.	Franklin, Pa.	12.40	24.80	"
" "	" " " "	Franklin, Pa.	Oil City, Pa.		8.40	W. U. Tel. Co. owns poles.
" "	" " Mah'ng Div.	4 mile west of Pymatuning, Pa.	Ferrona, Pa.	7.10	21.30	
" "	" " New Castle Br.	Ferrona, Pa.	New Castle, Pa.	22.20	22.20	
" "	" " " "	Ferrona, Pa.	Youngstown, Ohio.	14.50	58.00	
" "	" " Mah'ng Div.	Youngstown, Ohio.	Niles, Ohio...		44.50	W. U. Tel. Co. owns poles.
" "	" " " "	Niles, Ohio...	East end of Leavittsburg Yard, Ohio.		22.80	"
" "	" " Niles & Lisbon Br.	Niles, Ohio...	Lisbon, Ohio.		33.20	"
" "	" " Mahoning Div.	E. end Leavittsburg Yard, Ohio.	Leavittsburg, Ohio.		9.00	"
" "	" " Mahoning Div.	Leavittsburg, Ohio.	Sn. Tower, Leavittsburg, Ohio.		5.00	"
" "	" " Mahoning Div.	Sn. Tower, Leavittsburg, Ohio.	B'way, Cleveland, O.		282.60	"
" "	" " Cin'ti Div.	Kent, Ohio...	Sterling, Ohio.	15.85	158.50	Joint line $\frac{1}{2}$ pole mileage.
" "	" " " "	Sterling, Ohio.	Galion Shops, Ohio.	29.90	358.80	"
" "	" " " "	Galion Shops, Ohio.	Galion, Ohio.	.55	11.00	"
" "	" " " "	Galion, Ohio.	Marion, Ohio.	10.50	105.00	"
" "	" " " "	Marion, Ohio.	Dayton, Ohio.	41.85	167.40	"
" "	" " " "	Dayton, Ohio.	Cincinnati, Ohio.		59.20	"
" "	" " C. & E.R.R., Lima Div.	Marion, Ohio.	M.J. Tower, Marion, O.		13.20	C. H. & D. Line poles. W. U. Tel. Co. owns poles.
[66] Mar. 10, 1907.	C. & E.R.R., Lima Div.	M.J. Tower, Marion, Ohio	Spencerville Tower, Ohio.		247.20	"
" "	" " " "	Spencerville Tower, Ohio.	Huntington, Ind.		313.00	"
" "	" " " " Chic. "	Huntington, Ind.	No. Judson, Ind.		364.00	"
" "	" " " "	No. Judson, Ind.	Hy. Tower, Hammond, Ind.		191.60	"
" "	" " " "	Hy. Tower, Hammond, Ind.	State Line, Ind.		11.50	"
" "	" " " " Coal Storage Loop.	Hy. Tower, Hammond, Ind.	Coal Storage Plant, Ind.	.40	1.20	"
" "	" " C. & W. I. R.R., Chicago Div.	Illinois State Line.	Englewood, Ill.		84.60	"
" "	" " C. & W. I. R.R., Chicago Div.	Englewood, Ill.	Fourteenth St., Chicago, Ill.		5.00	"
Total...				1,098.65	8,592.30	

Approved.

Approved.

F. D. UNDERWOOD,
Pres't. Erie Railroad Company.R. C. CLOWRY,
Pres't. Western Union Tel. Co.

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Erie Railroad Company. Schedule D. Prior contracts.

Date of contract.	Parties.		Subject.
	Telegraph Company.	Railroad Company.	
Mar. 8, 1879	The Western Union Telegraph Company.	New York, Lake Erie & Western R. R.	Original agreement.
July 22, 1891	do.	do.	Supplemental agreement.
May 23, 1893	do.	do.	Sup. agree. (Erie Dspch.).
April 1, 1878	do.	Tioga R. R.	Original agreement.
Nov. 25, 1874	do.	Buffalo & Jamestown.	"
May 4, 1880	do.	Buffalo & Southwestern.	Supplemental agreement.
June 1, 1886	do.	Erie & W. V. R. R.	Original agreement.
May 26, 1865	The United States Telegraph Company.	Northern R. R. of N. J.	" "
Oct. 31, 1888	The Western Union Telegraph Company.	New York & Greenwood Lake R. R.	" "
Dec. 5, 1894	do.	do.	Supplemental agreement.
Nov. 10, 1875	do.	N. J. & N. Y. R. R.	Original agreement.
Nov. 29, 1881	do.	N. Y., S. & W. R. R.	" "
Nov. 22, 1893	do.	N. Y., S. & W. R. R. and W.-B. & Estn. R. R.	Supplemental agreement.
Feb. 1, 1867	do.	Atlantic & G. W. R. R. (N. Y., P. & O.).	Original agreement.
June 4, 1863	do.	Cleveland & Mahoning R. R.	" "
July 1, 1870	do.	Niles & New Lisbon R. R.	" "
Aug. 8, 1873	do.	Chicago & Atlantic.	" "
May 1, 1882	do.	do.	Supplemental agreement.

Approved.

F. D. UNDERWOOD,
Pres. Erie Railroad Company.

Approved.

R. C. CLOWRY,
*Pres. Western Union Tel. Co.*68 *Erie Railroad Company. Schedule E. Wires now used by railroad company, including wires owned by it and wires furnished by the telegraph company, and wires used jointly.*

Date.	Railroad.	From—	To—	Single wire.	Remarks.
Mar. 10, 1907	Erie R. R., Weehkn. Br.	East end of Bergen Tunnel, N. J.	Weehawken, N. J.	9.80	1/4 mileage of No. 10 inc.
" "	" " N. Y. Div.	Erie Stn., Jersey City, N. J.	Provost St., Jersey City, N. J.	10.80	"
" "	" " " "	Provost St., Jersey City, N. J.	East end Bergen Tunnel, Jersey City, N. J.	9.90	"
" "	" " " "	East end Bergen Tunnel, Jersey City, N. J.	West End, N. J....	20.45	"
" "	" " " "	West End, N. J....	Midland Bridge, N. J.	4.20	"
" "	" " " "	Midland Bridge, N. J.	N. J. & N. Y. Jet., N. J.	39.20	
" "	" " " "	N. J. & N. Y. Jet., N. J.	Rutherford Jet., N. J.	10.50	
" "	" " " "	Rutherford Jet., N. J.	Newark Jet., N. J.	24.40	
" "	" " " "	Newark Jet., N. J.	Paterson Stn., N. J.	4.90	
" "	" " " "	Paterson Stn., N. J.	Brdway., Paterson, N. J.	1.80	
" "	" " " "	Brdway., Paterson, N. J.	Ridgewood Jet., N. J.	25.80	
" "	" " " "	Ridgewood Jet., N. J.	Newburgh Jet., N. Y.	247.00	
" "	" " " "	Newburgh Jet., N. Y.	Turner, N. Y.	12.00	
" "	" " " "	Turner, N. Y.	Greycourt, N. Y. ..	50.40	
" "	" " " "	Greycourt, N. Y. ..	Cottage St., Middletown, N. Y.	110.70	
" "	" " " "	Cottage St., Middletown, N. Y.	5 poles west of Xim Tower, Middletown, N. Y.	3.90	1/4 mileage of No. 64 inc.

Erie Railroad Company. Schedule E. Wires now used by railroad company, etc.—Continued.

Date.	Railroad.	From—	To—	Single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., N. Y. Div..	5 poles west of Xm Tower, Middletown, N. Y.	Navesink Bridge, N. Y.	181.80	
" "	" " " "	Navesink Bridge, N. Y.	Port Jervis, N. Y..	6.30	
" "	" " " "	Port Jervis, N. Y..	"C" office, Buckley's, Port Jervis, N. Y.	24.00	
" "	" " " "	Buckley's, N. Y..	Sparrowbush, N. Y.	11.00	
" "	" " Del. Div.	Sparrowbush, N. Y.	Carr's Rock, Pa...	102.60	
" "	" " " "	Carr's Rock, Pa...	Handsome Eddy, Pa.	35.10	
" "	" " " "	Handsome Eddy, Pa.	Lackawaxen, Pa..	45.00	
" "	" " " "	Lackawaxen, Pa..	Lanesboro, Pa....	557.90	1/4 mileage of No. 54 inc.
" "	" " " "	Lanesboro, Pa....	Susquehanna Yard, Pa.	8.50	
" "	" " " "	East end of Susquehanna Yard, Pa.	Susquehanna, Pa.	6.80	"
" "	" " Susq. Div.	Susquehanna, Pa.	Sq. Tower, Susquehanna, Pa.	7.20	
[69] Mar. 10, 1907.	Erie R. R., Susq. Div.	Sq. Tower, Susquehanna, Pa.	Sr. Tower, Susquehanna, Pa.	9.00	
" "	" " Jeffsn. Div.	Lanesboro, Pa....	West Carbondale, Pa.	54.60	1/4 mileage of No. 54 inc.
" "	" " " "	West Carbondale, Pa.	Jessup, Pa.....	10.50	
" "	" " " "	Jessup, Pa.....	Rock Junction, Pa.	6.00	
" "	" " Wyo. Div.	Lackawaxen, Pa..	West Hawley, Pa.	31.40	
" "	" " " "	West Hawley, Pa..	Honesdale, Pa....	18.00	
" "	" " " "	West Hawley, Pa..	Saco, Pa.....	63.00	
" "	" " " "	West Lake Jet. Pa.	Lake Ariel, Pa....	5.60	
" "	" " " "	Saco, Pa.....	Rock Junction, Pa.	21.60	
" "	" " " "	Rock Junction, Pa.	No. 6 Junction, Pa.	6.00	
" "	" " " "	No. 6 Junction, Pa.	Dunmore, Pa....	3.00	
" "	" " " "	Dunmore, Pa....	Scranton, Pa.....	7.60	
" "	" " " "	West Junction, Pa.	No. 7 Jet. Pittston, Pa.	12.30	
" "	" " Newark Br.	West End, N. J...	N. Y. & G. L. Jet., N. J.	6.80	
" "	" " " "	N. Y. & G. L. Jet., N. J.	Newark, N. J....	12.00	
" "	" " " "	Newark, N. J....	Newark Jet., N. J..	32.40	
" "	" " N. Y. & G. L. R. R....	N. Y. & G. L. Jet., N. J.	Sterling Forest, N. J.	39.80	
" "	" " N. Y. & G. L. R. R., Orange Branch.	Forest Hill, N. J..	West Orange, N. J.	8.00	
" "	" " N. Y. & G. L. R. R., Caldwell Branch.	Great Notch, N. J.	Essex Fells, N. J..	11.40	
" "	" " N. Y. & G. L. R. R., Ringwood Branch.	Ringwood Jet., N. J.	Ringwood, N. J...	5.20	
" "	" " Northern R. R. of N. J.	Midland Bridge, N. J.	0.3 mile west of Granton Jet., N. J.	9.60	
" "	" " " "	0.3 mile west of Granton Jet., N. J.	Edgewater Bridge, N. J.	2.50	1/4 mileage of No. 10 inc.
" "	" " " "	Edgewater Bridge, N. J.	Sparkill, N. Y....	15.40	
" "	" " " "	Sparkill, N. Y....	Nyack, N. Y.....	9.00	
" "	" " N. J. & N. Y. R. R....	N. J. & N. Y. Jet., N. J.	Nanuet Jet., N. Y.	20.70	
" "	" " " "	Spring Valley, N. Y.	Haverstraw, N. Y.	11.00	
" "	" " N. J. & N. Y. R. R., Piermont Branch.	Sparkill, N. Y....	Nanuet Jet., N. Y.	6.00	
" "	" " N. J. & N. Y. R. R., Piermont Branch.	Nanuet Jet., N. Y.	Spring Valley, N. Y.	4.60	
" "	" " N. J. & N. Y. R. R., Piermont Branch.	Spring Valley, N. Y.	Suffern, N. Y....	6.70	
" "	" " Erie R. R., Brgn. Co. R. R.	Rutherford Jet., N. J.	Garfield, N. J....	7.20	
[70] Mar. 10, 1907.	Erie R. R., Brgn. Co. R. R.	Garfield, N. J....	Passaic Jet. N. J...	12.50	
" "	" " " "	Passaic Jet., N. J..	Ridgewood Jet., N. J.	29.40	
" "	" " Erie R. R., Newburgh Short Cut	Newburgh Jet., N. Y.	Vails Gate Jet., N. Y.	25.20	

Erie Railroad Company. Schedule E. Wires now used by railroad company, etc.—Continued.

Date.	Railroad.	From—	To—	Single wire.	Remarks.
Mar. 10, 1907.	Erie R. R. Newbgh. Br.	Greycourt, N. Y.	Vails Gate Jct., N. Y.	27.60	
" "	" " " "	Vails Gate Jct., N. Y.	West Newburgh, N. Y.	12.80	
" "	" " " "	West Newburgh, N. Y.	Newburgh, N. Y.	7.20	
" "	" " Montgmy. Br.	Goshen, N. Y.	Montgomery, N. Y.	5.10	$\frac{1}{2}$ mileage of No. 53 inc.
" "	" " " "	Campbell Hall Jct., N. Y.	Maybrook, N. Y.	5.60	
" "	" " Pine Isld. Br.	Goshen, N. Y.	Pine Island, N. Y.	5.90	$\frac{1}{2}$ mileage of No. 64 inc.
" "	" " M. & C. Br.	Cottage St., Middletown, N. Y.	Crawford Jct. N. Y.	1.60	$\frac{1}{2}$ mileage of No. 64 inc.
" "	" " " "	Crawford Jct., N. Y.	Pine Bush, N. Y.	5.10	$\frac{1}{2}$ mileage of No. 64 inc.
" "	N. Y., S. & W. R. R.	P. R. R. Jct., N. J.	Junction pole west of County Road, N. J.	2.00	$\frac{1}{2}$ mileage of No. 3 inc.
" "	" " " "	Midland Bridge, N. J.	Junction pole west of County Road, N. J.	.20	$\frac{1}{2}$ mileage of No. 10 inc.
" "	" " " "	Junction pole west of County Road, N. J.	0.3 mile west of Granton Jct., N. J.	12.60	$\frac{1}{2}$ mileage of Nos. 3 & 10 included.
" "	" " " "	0.3 mile west of Granton Jct., N. J.	Edgewater Bridge, N. J.	2.50	$\frac{1}{2}$ mileage of No. 3 inc.
" "	" " " "	Edgewater Bridge, N. J.	N. R. R. of N. J. Bridge, N. J.	1.80	$\frac{1}{2}$ mileage of Nos. 3 & 10 included.
" "	" " " "	N. R. R. of N. J. Bridge, N. J.	West end Edgewater Tunnel, N. J.	7.00	" "
" "	" " " "	Edgewater Bridge, N. J.	Little Ferry Jct., N. J.	2.75	$\frac{1}{2}$ mileage of No. 3 inc.
" "	" " " "	Little Ferry Jct., N. J.	Passaic Jct., N. J.	26.60	" "
" "	" " " "	Passaic Jct., N. J.	Beaver Lake, N. J.	90.75	" "
" "	" " " "	Brdway, Paterson, N. J.	Paterson City, N. J.	1.40	" "
" "	" " " "	Beaver Lake, N. J.	Cottage St., Middletown, N. Y.	34.30	" "
" "	" " " "	Beaver Lake, N. J.	S. C. R. R. Jct., Pa.	151.20	$\frac{1}{2}$ mileage of No. 3 inc.
" "	" " " "	S. C. R. R. Jct., Pa.	Minooka, Pa.	7.70	" "
" "	" " " "	S. C. R. R. Jct., Pa.	Yatesville, Pa.	11.50	" "
" "	" " " "	Yatesville, Pa.	Wilkes-Barre, Pa.	3.20	" "
" "	Erie R. R. Susq. Div.	Sr. Tower, Susquehanna, Pa.	Liberty St., Binghamton, N. Y.	138.60	" "
[71] Mar. 10, 1907.	Erie R. R., Susq. Div.	Liberty St., Binghamton, N. Y.	.3 mile west of Binghamton, N. Y.	8.40	" "
" "	" " " "	.3 mile west of Binghamton, N. Y.	East end of Owego Yard, N. Y.	149.80	" "
" "	" " " "	East end of Owego Yard, N. Y.	West end of Owego Yard, N. Y.	3.50	" "
" "	" " " "	West end of Owego Yard, N. Y.	East end of Waverly Yard, N. Y.	128.80	" "
" "	" " " "	East end of Waverly Yard, N. Y.	Waverly, N. Y.	3.50	" "
" "	" " " "	Waverly, N. Y.	Miller St., Elmira, N. Y.	112.70	" "
" "	" " " "	Miller St., Elmira, N. Y.	Water St., Elmira, N. Y.	8.50	$\frac{1}{2}$ mileage of No. 23 inc.
" "	" " " "	Water St., Elmira, N. Y.	Elmira Stn., N. Y.	4.75	" "
" "	" " " "	Elmira Stn., N. Y.	Washington Av. Bridge, Elmira, N. Y.	4.00	" "
" "	" " " "	Washington Av. Bridge, Elmira, N. Y.	East end of Corning Yard, N. Y.	132.80	" "
" "	" " " "	East end of Corning Yard, N. Y.	Corning, N. Y.	2.40	" "
" "	" " " "	Corning, N. Y.	West end of Corning Yard, N. Y.	6.30	" "
" "	" " " "	West end of Corning Yard, N. Y.	Painted Post, N. Y.	10.80	" "
" "	" " " "	Painted Post, N. Y.	East end of Hornell Yard, N. Y.	301.60	" "
" "	" " " "	East end of Hornell Yard, N. Y.	Hornell, N. Y.	12.00	" "

Erie Railroad Company. Schedule E. Wires now used by railroad company, etc.—Continued.

Date.	Railroad.	From—	To—	Single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., Susq. Div.	Hornell, N. Y.	Buffalo Div. Jct., N. Y.	15.30	
" "	" " Tioga Div.	Miller St., Elmira, N. Y.	Hoytville, Pa.	28.70	½ mileage of No. 23 inc.
" "	" " " "	Tioga Jct., Pa.	Lawrenceville, Pa.	3.40	" "
" "	" " Roch str. Div.	Painted Post, N. Y.	Avon, N. Y.	74.20	
" "	" " Roch str. Div., C. L. Br.	Conesus Lake Jct., N. Y.	Lakeville, N. Y. ...	2.50	
" "	" " Roch str. Div.	Avon, N. Y.	Rochester, N. Y. ...	9.53	½ mileage of Nos. 55 and 113 included.
" "	" " Mt. Morris Br.	Avon, N. Y.	Mt. Morris, N. Y. ...	22.95	½ mileage of No. 113 inc.
" "	" " Rochester Div., Attica Br.	Avon, N. Y.	Attica, N. Y.	17.45	½ mileage of No. 55 inc.
[72] Mar. 10, 1907.	Erie R. R., Buffalo Div.	Buffalo Div. Jct., N. Y.	Attica, N. Y.	177.90	
" "	" " " "	Attica, N. Y.	William St., Buff., N. Y.	96.25	½ mileage of No. 55 inc.
" "	" " " "	William St., Buff., N. Y.	East Buffalo, N. Y.	4.55	" "
" "	" " " "	East Buffalo, N. Y.	Smith St., Buffalo, N. Y.	7.00	½ mileage of Nos. 55 and 41 included.
" "	" " " "	Smith St., Buffalo, N. Y.	Buffalo Stn., N. Y.	10.40	" "
" "	" " " "	Smith St., Buffalo, N. Y.	Buffalo Creek Jct., N. Y.	2.60	On Buffalo Cr. R. R. poles.
" "	" " " "	Loop lines in Buffalo Yard, N. Y.		12.60	
" "	" " Niag. Falls Br.	East Buffalo, N. Y.	Suspension Bridge, N. Y.	34.20	½ mileage of No. 41 inc.
" "	" " " "	International Jct., N. Y.	Black Rock, N. Y.	4.30	" "
" "	" " " "	Falls Junction, N. Y.	Niagara Falls, N. Y.	1.40	" "
" "	" " Buffalo & Southwestern R. R.	Buffalo Creek Jct., N. Y.	West Seneca, N. Y.	6.60	On N. Y. C. & St. L. R. R. poles.
" "	" " Buffalo & Southwestern R. R.	West Seneca, N. Y.	Waterboro, N. Y. ...	105.20	
" "	" " Erie R. R., Allgny. Div.	Buffalo Div. Jct., N. Y.	Carrollton, N. Y. ...	445.20	
" "	" " " "	Carrollton, N. Y. ...	Salamanca, N. Y. ...	37.80	
" "	" " " "	Salamanca, N. Y. ...	West Salamanca, N. Y.	12.60	
" "	" " " "	West Salamanca, N. Y.	Dunkirk, N. Y.	90.00	
" "	" " " "	Bradford, N. Y. ...	Bradford, Pa.	35.10	
" "	" " " "	Bradford, Pa.	Johnsonburg, Pa.	42.00	
" "	" " " "	Johnsonburg, Pa.	Daguseahonda, Pa.	10.50	
" "	" " " "	Daguseahonda, Pa.	Dagus Mines, Pa. ...	5.50	
" "	" " " "	Dagus Mines, Pa. ...	Toby Mines, Pa. ...	2.00	
" "	" " " "	Toby Mines, Pa. ...	Brockwayville, Pa.	24.00	
" "	" " " "	Crawford Jct., Pa.	Alton, Pa.	3.40	
" "	" " " "	West Salamanca, N. Y.	Waterboro, N. Y. ...	107.00	
" "	" " " "	Waterboro, N. Y. ...	Jamestown, N. Y.	74.20	
" "	" " " "	Jamestown, N. Y.	Corry, Pa.	135.50	
" "	" " " "	Corry, Pa.	Meadville, Pa.	249.60	
" "	" " " "	Meadville, Pa.	Buchanan, Pa.	21.90	
" "	" " " "	Buchanan, Pa.	Shenango, Pa.	152.40	
" "	" " " "	Shenango, Pa.	A mile west of Pyramating, Pa.	46.30	
" "	" " " "	A mile west of Pyramating, Pa.	Johnsons, Ohio.	53.20	
" "	" " " "	Johnsons, Ohio. ...	East end of Leavittsburg Yard Ohio.	40.50	
[73] Mar. 10, 1907.	Erie R. R., Meadvie. Div.	West end of Leavittsburg Yard, Ohio.	Kent, Ohio.	106.00	
" "	" " " "	Buchanan, Pa.	Oil City, Pa.	33.20	
" "	" " " "	Franklin Br., Mahong Div.	0.4 mile west of Pyramating, Pa.	21.30	
" "	" " " "		Ferrona, Pa.		

Erie Railroad Company. Schedule E. Wires now used by railroad company, etc.—Continued.

Date.	Railroad.	From—	To—	Single wire.	Remarks.
Mar. 10, 1907.	Erie R. R., N. Castle Br.	Ferrona, Pa.....	New Castle, Pa....	11.10	‡ mileage of No. 22 inc.
" "	" " Mahoning Div..	Ferrona, Pa.....	Youngstown, Ohio	30.75	"
" "	" " " "	Youngstown, Ohio	Niles, Ohio.....	44.50	"
" "	" " " "	Niles, Ohio.....	East end of Leavittsburg Yard, Ohio.	22.80	"
" "	" " Niles & Lsbn. Br.	Niles, Ohio.....	Lisbon, Ohio.....	33.20	"
" "	" " Mahoning Div..	East end of Leavittsburg Yard, Ohio.	Leavittsburg, Ohio	9.00	"
" "	" " " "	Leavittsburg, Ohio	Sn. Tower, Leavittsburg, Ohio.	5.00	"
" "	" " " "	Sn. Tower, Leavittsburg, Ohio.	Broadway, Cleveland, Ohio.	282.60	"
" "	" " Cincinnati Div.	Kent, Ohio.....	Sterling, Ohio.....	158.50	"
" "	" " " "	Sterling, Ohio.....	Galion Shops, Ohio	358.80	"
" "	" " " "	Galion Shops, Ohio	Galion, Ohio.....	11.00	"
" "	" " " "	Galion, Ohio.....	Marion, Ohio.....	105.00	"
" "	" " " "	Marion, Ohio.....	Dayton, Ohio.....	167.40	"
" "	" " " "	Dayton, Ohio.....	Cincinnati, Ohio..	59.20	"
" "	" " " "	Marion, Ohio.....	Mj. Tower, Marion, Ohio.	13.20	"
" "	Chicago & Erie R. R., Lima Division.	Mj. Tower, Marion, Ohio.	Spencerville, Tower, Ohio.	247.20	"
" "	Chicago & Erie R. R., Lima Division.	Spencerville, Tower, Ohio.	Huntington, Ind..	313.00	"
" "	Chicago & Erie R. R., Chicago Division.	Huntington, Ind..	No. Judson, Ind..	364.00	"
" "	Chicago & Erie R. R., Chicago Division.	No. Judson, Ind..	Hj. Tower, Hammond, Ind.	191.60	"
" "	Chicago & Erie R. R., Chicago Division.	Hj. Tower, Hammond, Ind.	Illinois State Line, Ill.	11.50	"
" "	Chicago & Erie R. R., Chicago Division.	Hj. Tower, Hammond, Ind.	Coal Storage Plant, Ill.	1.20	Coal Storage Loop.
" "	Chicago & W. I. R. R., Chicago Division.	Illinois State Line, Ill.	Englewood, Ill....	84.60	"
[74] Mar. 10, 1907.	Chicago & W. I. R. R., Chicago Division.	Englewood, Ill....	Fourteenth St., Chicago, Ill.	5.00	"
" "	Submarine cables.....	Jersey City, N. J..	New York.....	8.00	"
" "	Underground cables...	In New York City.	.....	22.50	"
" "	Loops.....	In Rochester, N. Y.	.....	.50	"
" "	" "	In Cleveland, Ohio	.....	12.00	"
" "	" "	In Cincinnati, Ohio.	.....	1.00	"
" "	Underground cables...	Englewood, Ill....	Railway Exchange, Chicago, Ill.	30.70	"
" "	" "	Fourteenth St., Chicago, Ill.	Railway Exchange, Chicago, Ill.	9.60	"
			Total.....	8,573.10	

Approved.

R. C. CLOWERY,
Pres't. Western Union Tel. Co.

Approved.

T. B. UNDERWOOD,
Pres't. Erie Railroad Co.

75 (Indorsement on cover:) Box No. — File No. —
Agreement between the Western Union Telegraph Co. and
Erie Railroad Co. Dated September 25th, 1907.

76 (Endorsed) U. S. District Court. The United States of
America vs. Erie Railroad Company. Indictment. 184
U. S. C. C.—H. Snowden Marshall, U. S. attorney. A true bill.
D. Wiesenberger, foreman. U. S. District Court, S. D. of N. Y.,
filed June 2, 1914.—1914, June 4. filed demurrer. June 4, demurrer
sustained.

DISTRICT COURT OF THE UNITED STATES,
Southern District of New York.

UNITED STATES

vs.

ERIE RAILROAD COMPANY.

And now comes the Erie Railroad Company, by Rush Taggart, its attorney, and, having heard the said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that it, the said Erie Railroad Company, is not bound by the law of the land to answer the same, and this it is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said Erie Railroad Company prays judgment, and that by the court it may be dismissed and discharged from the said premises in the said indictment specified.

June 3, 1914.

RUSH TAGGART,

Attorney for Defendant, Erie Railroad Company.

(Endorsed) U. S. District Court, S. D. of N. Y. Filed Jun. 4, 1914.

78 Memo. opinion. United States District Court. Southern District of New York.

Before Hon. Julius M. Mayer, J.

UNITED STATES OF AMERICA,

vs.

ERIE RAILROAD COMPANY.

JUNE 4, 1914.

The COURT (Mayer, J.): After extended argument I am clearly of the opinion that the "current business of the carrier" referred to in sec. 184 is the kind of business in which it appears from the indictment the carrier was engaged, and that the sending of the letters in question was in accordance with law. I see no reason for a more extended opinion in view of the fact that the importance of the subject matter suggests that it will be taken on review to the Supreme Court of the United States. It is therefore ordered that a judgment of this court be entered sustaining the demurrer to the indictment herein, because, upon the construction of the statute hereinbefore stated, the indictment is not authorized by the statute upon which it rests. For the reasons briefly stated, I sustain the demurrer; and an appropriate order will be entered.

JULIUS M. MAYER,

District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jun. 8, 1914.

79

Order sustaining demurrer.

At a stated term of the U. S. District Court for the trial of criminal cases held at the United States court house and post-office building, in the borough of Manhattan, city of New York, on the 4th day of June 1914.

Present: Hon. Julius M. Mayer, U. S. judge.

UNITED STATES OF AMERICA

vs.

ERIE RAILROAD COMPANY.

An indictment against the Erie Railroad Company, the defendant above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York, in the office of the clerk of the United States District Court for the Southern District of New York on the 2nd day of June, 1914, and thereafter the defendant above named having been arraigned and having thereupon interposed a demurrer, and the issues raised by the said demurrer having thereafter been brought on to be heard, and after hearing Rush Taggart, Esq., in support of said demurrer, and Gordon Auchincloss, assistant United States attorney, in opposition thereto,

Now on motion of Rush Taggart, Esq., counsel for the defendant, it is

Ordered and adjudged that the said demurrer be, and the same hereby is, sustained, and the indictment herein is hereby set
80 aside and declared to be null and void, because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of March 4, 1909 (35 Stat., 1088), § 184, or under the construction of any other statute of the United States now in force.

JULIUS M. MAYER,
U. S. District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jun. 8, 1914.

81

Petition for writ of error.

UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN ERROR,

vs.

ERIE RAILROAD COMPANY, DEFENDANT.

Now comes the United States of America, by its attorney, H. Snowden Marshall, and complains that in the record and proceedings had in this cause, and in the judgment sustaining the defendant's demur-

rer to the indictment herein and dismissing said indictment, which order and judgment were duly made and filed in the office of the clerk of the United States District Court for the Southern District of New York on the 8th day of June, 1914, a manifest error has happened, as will appear in the assignment of errors herewith submitted.

Wherefore, the United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: New York, June 16th, 1914.

H. SNOWDEN MARSHALL,
*U. S. Attorney for the Southern District
of New York, Attorney for Petitioner.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jun. 16, 1914.

82

Assignment of errors.

UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN ERROR,
vs.
ERIE RAILROAD COMPANY, DEFENDANT.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein sustaining defendant's demurrer to the indictment herein:

1. The court erred in sustaining the demurrer to the indictment herein.

2. The court erred in not overruling the demurrer to the indictment herein.

3. The court erred in holding as a matter of law that the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of March 4, 1909 (35 Stat., 1088), sec. 184, or under the construction of any other statute of the United States now in force.

And the United States, aforesaid plaintiff in error, prays that the order entered and filed herein sustaining defendant's demurrer to the indictment herein, for the errors aforesaid and other errors in the record and proceedings herein, may be reversed and altogether held for nothing, and that the plaintiff in error may be restored to all things which it has lost by reason of said order, and that
83 the District Court of the United States for the Southern District of New York be directed to vacate and set aside such

order and to compel the defendant in error to plead to the indictment herein.

Dated: New York, June 16th, 1914.

H. SNOWDEN MARSHALL,
*United States Attorney, Southern District of
New York, Attorney for Plaintiff in Error.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jun. 16, 1914.

84

Citation.

By the honorable Charles M. Hough, one of the justices of the District Court of the United States for the Southern District of New York, in the Second Circuit.

To the Erie Railroad Company, greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden in the city of Washington, in the District of Columbia, on the 16th day of July, 1914, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Southern District of New York, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 16th day of June, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

[SEAL.]

LEARNED HAND,

*Judge of the District Court of the United States for the
Southern District of New York, in the Second Circuit.*

85

(Indorsed on back:) C-7-40. U. S. District Court, Southern District of New York. The United States of America versus Erie Railroad Company. Citation. H. Snowden Marshall, United States attorney, attorney for U. S. A. Due service of a copy of the within is hereby admitted. New York, June 17, 1914. Rush Taggart, attorney for deft. To Rush Taggart, attorney for deft., 195 Broadway, New York, N. Y. U. S. District Court, S. D. of N. Y. Filed June 17, 1914.

(Indorsement on cover:) File No. 24296. S. New York, D. C. U. S. Term No., 552. The United States, plaintiff in error, vs. Erie Railroad Company. Filed July 3d, 1914. File No. 24296.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 552.
v.	
ERIE RAILROAD COMPANY.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, moves the court to advance the above-entitled case for hearing on a day convenient to the court at the present term.

This was an indictment in two counts. Each count charged the transmission by defendant in error, over its line, otherwise than by United States mail, of a communication which did not relate "to

the current business of the company," in violation of section 184 of the Criminal Code.

A demurrer, based upon the insufficiency of the indictment, was sustained, the court, construing the statute upon which the indictment was founded, being of opinion that the sending of the letters was according to law.

Acting in the interest of economy, the Western Union Telegraph Company and the Erie Railroad Company entered into a contract for the maintenance and operation of joint telegraph lines along the right of way of the railroad company, and for the use of such lines in common. Among other things, under the agreement, the telegraph operators at the railroad stations handle the telegraph business of both companies. They are under the supervision of a Superintendent of Telegraph, who likewise serves both companies in that capacity. The salaries of the operators are paid by the railroad company; that of the superintendent is paid one-half by each of the companies. The railroad company receives 25 per cent of the receipts from the business of the telegraph company transacted at the stations along the lines of the former.

Letters of the character described in the indictment are being carried outside the mails not only by defendant in error but by railroad companies generally throughout the United States, the parties in entering into the contract above mentioned having simply followed a practice which obtains gen-

erally in this country between telegraph companies and railroad companies. The question is, therefore, whether the communications are such as under the circumstances relate "to the current business of the carrier" within the meaning of the statute.

Opposing counsel concur in this motion.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1914.



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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,	}	No. 552.
v.		
ERIE RAILROAD COMPANY.		

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

An indictment was presented in the Southern District of New York charging the defendant in error with carrying otherwise than in the mails certain letters in violation of section 184 of the Penal Code of the United States, which is as follows:

SEC. 184. Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city,

town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article carried at the same time by the same stagecoach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars.

The indictment (R. 1-9) contained two counts, but the counts are similar in all respects, except as to the letter which the defendant in error was charged with carrying in violation of section 184, *supra*.

The indictment alleged that the defendant operated a line of railroads, and that it regularly performed trips between Jersey City, N. J., and Montgomery, N. Y.; that the United States mail was regularly carried between these two points; that the defendant had made a contract with the Western Union Telegraph Company—which contract was attached to and made a part of the indictment—by which provision was made for a joint operation of telegraph lines over the right of way of defendant; that the business was under the supervision of a joint superintendent named E. P. Griffith, and that the telegraph office at Montgomery—both for railroad and commercial business—was in charge of G. A. Osborne, the station agent of the defendant; that on June 27, 1912, the

defendant carried, otherwise than in the mails, the following letter (R. 4):

JUNE 27, 1912.

Mr. G. A. OSBORNE,
Agent Erie Railroad and Manager
W. U. T. Co., Montgomery, N. Y.

DEAR SIR: The revenue of the W. U. T. Co.'s receipts at Montgomery, N. Y., would indicate that the new telegraph service, such as day and night letters, had not been thoroughly presented to the people of Montgomery. At many of the Erie Railroad stations similar to Montgomery very handsome increases in telegraph receipts have been shown on account of this new service, and as the Erie Railroad participates in the telegraph revenue from its railroad stations, it is desired that their revenue from the telegraph company shall increase as well as the revenue from its freight and passenger traffic, and I hope you will do everything to make such showing.

Yours truly,

(Sd.)

E. P. GRIFFITH,
Supt. of Telgh.

The second count was based on another letter which was as follows (R. 7):

JUNE 27th, 1912.

Mr. E. A. OSBORNE,
Agent Erie Railroad Co. and Manager
W. U. Tel. Co., Montgomery, Orange
County, N. Y.

DEAR SIR: I forwarded to you by train mail on June 20th a copy of the new West-

ern Union Telegraph Company's tariff book, which shows a considerable number of changes in telegraph rates, particularly with respect to the old 40-cent rate having been reduced to 30 cents to a considerable number of points, and I would ask that you familiarize yourself with the new rates in order to avoid check errors. The misquoting of rates creates a large number of error sheets and correspondence and not only confuses the auditing department of the W. U. Tel. Co., but also delays settlements between the telegraph company and the Erie Railroad.

As you are aware, the Erie Railroad receives a percentage of the W. U. Tel. Co.'s telegraph receipts at all Erie Railroad stations where the agent of the railroad, under contract with the telegraph company, also acts as the agent or manager of the telegraph company, and that the handling of Western Union telegrams, in making up of Western Union reports, from which the railroad company's proportion of receipts are figured, and all of the accounting and correspondence relative to Western Union matters are as much the current business of the railroad as handling accounts or reports made in connection with the freight shipments or sale of tickets for the railroad, the railroad company receiving a revenue from all.

Your attention is specially called to modification of Rule No. 8 for the instructions to all New York State offices only and to be used instead of rule 8, printed in the tariff

book, printed copy of which I enclose herewith.

Yours, truly,

(Sd.)

E. P. GRIFFITH,

Supt. of Telgh.

The indictment was demurred to (R. 52), and the demurrer was sustained by the court (R. 53), because, according to its construction of the meaning of the words "except such as relate * * * to the current business of the carrier" in section 184, *supra*, these letters fell within the exception, and the law had not been violated (R. 52). A writ of error was then sued out by the United States under the Criminal Appeals Act.

The contract between the defendant and the Western Union Telegraph Company will be found—excepting the schedules—on pages 9-33 of the record. Its preamble indicates that, before its date—Sept. 25, 1907—the defendant and the telegraph company each owned poles, wires, etc., along the railroad right of way, and that presumably prior agreements had existed in regard to their use. The agreement in question was a comprehensive one meant to arrange the relationship between the two companies for 21 years (R. 31).

It "leases" to the telegraph company "the right" to maintain the telegraph line it already had and all extensions made by the telegraph company (R. 10), and "the right" to operate them, and it also "leases" to the telegraph company the

telegraph line formerly owned by the railroad company, and all extensions thereof, "to have and to hold the same during the continuance of this agreement" (R. 11). The telegraph company was to build new lines at its own expense (R. 12), but the railroad company was to aid it by giving the free use of the railroad for construction purposes (R. 12, 13).

Speaking generally, there was to be one wire for railroad use and one wire for commercial use (R. 14), though joint wires were to be used where nothing more was required (R. 16). The operators were apparently to be the station agents of the railroad company in most cases, but, where business justified, each might have an operator. (R. 21.) The operators, however, and the joint superintendent, it was expressly covenanted by the telegraph company, were to be deemed, for the purposes of the contract, "the servants of the telegraph company." (R. 27.)

The consideration of this agreement, or, more properly, the rental under this lease, was 25% of the receipts of the telegraph company on commercial messages (R. 22, 23), the free carriage of telegrams relating to railroad business (R. 18, 19), offset by the agreement of the railroad company to carry materials (R. 19), furnish offices and operators (R. 21), pay for certain lines (R. 16, 17), and give exclusive privileges, so far as possible, to the telegraph company (R. 23).

At the end of the term the telegraph line—so far as it previously was owned by the railroad company—was to remain its property, and that part of the poles, etc., previously owned by the telegraph company was either to be removed or paid for at a compensation to be fixed by agreement or arbitration. (R. 31, 32.)

The details of this agreement can be better understood by taking them up as a part of the argument.

ARGUMENT.

I.

The construction of the statute.

The statute—section 184, Penal Code, *supra*—provides a penalty of \$50 for every violation. It is, therefore, in a sense, penal. Moreover, it may be claimed, with some force, that it is in derogation of common right, the freedom of the individual requiring protection to the extent that a court should look jealously on an attempt by law to prevent him from carrying letters—as it would most certainly look upon an attempt to prevent him from carrying ordinary merchandise. This view has some support in decisions of the lower Federal courts. (*U. S. v. U. S. Express Co.*, 5 Biss. 91.)

The grant however, in the Constitution to Congress of the power “to establish Post Offices and Post Roads,” following the earlier grant in Article IX of the Articles of Confederation of “the sole

and exclusive right and power of * * * establishing and regulating post offices from one State to another, throughout all the United States"—this in its turn being simply a reenactment of the previous monopoly over the mails enjoyed by the English Government and its colonies on this continent for one hundred years before, throws a different light on the matter. Whatever may be one's private belief—whether he think the mails could be carried with more benefit to the public by individual farmers or contractors or whether a system of governmental operation, spurred or tempered by individual competition, appeal more to his mind—the fact remains that under the long-established usage of this country—both legal and practical—the carriage of the mails has been and is a governmental monopoly, with which individuals have no concern. This usage has grown out of high political considerations, involving a broad view of the public interests as a whole, and believed by Congress to justify the expenditure of public monies and the creation of a great public establishment. With the merits of these political views this court, of course, has no concern. Indeed, the relation between Congress and the Judiciary upon this subject has been thoroughly gone into in several opinions of this court and the greatness and beneficial character of the constitutional grant explained and justified.

If the Government undertake this great function expressly entrusted to it by the Constitution, and Congress in honestly attempting to do so estab-

lish a monopoly—as it did in the earliest acts upon the subject—it is evident that this monopoly must be carefully protected from private or individual interference. A great system of this character, carried on not for purposes of gain but for the public benefit, has many weak points, and the incentive in the individual to find these points is constantly present. Laws, therefore, to prevent this interference of individuals, to guard these weak points, to prevent evasions and subterfuges—even if they are sanctioned by penalties—are really remedial. In Blackstone's language (Comm., Vol. I, p. 88), they do not punish the individual, but the act, and do not seek to destroy the private competition except for the purpose of building up the public establishment. Accordingly the strict rule of construction should not be applied to them. They should rather be interpreted with the purpose, so far as the language taken naturally admits, to carry out the intent of Congress—which was to establish a monopoly of the carriage of the mails—and to prevent any evasion of that purpose attempted under an unnatural or loose construction.

In *United States v. Bromley*, 12 How. 88, an action of debt on a penalty was brought under section 10 of the act of March 3, 1845, which was the same for present purposes as section 184, Penal Code. Judgment having been rendered for the defendant, the case could not be brought to this court on error unless it was an action “for the enforcement of the revenue laws of the United States.”

Mr. Justice McLean, speaking for the court, said, pp. 96, 97:

That the act which prescribes the offence charged is a revenue law, there would seem to be no doubt. In its title, it is declared to be an act to reduce the rates of postage, and for the "prevention of frauds on the revenue of the Post Office Department." In its character and object it is a revenue law, as it acts upon the rates of postage and increases the revenue by prohibiting and punishing fraudulent acts which lessen it. Under the act of 1836, the revenue of the Post Office Department is paid into the Treasury. Revenue is the income of a State, and the revenue of the Post Office Department, being raised by a tax on mailable matter conveyed in the mail, and which is disbursed in the public service, is as much a part of the income of the Government as moneys collected for duties on imports.

This judgment of the court is decisive that section 184 is not essentially penal in its nature, but that it is rather remedial, its main purpose being to preserve the revenues of the United States, and the great establishment which has been built up under the statutes of the United States for the benefit of the whole people.

It is not necessary to cite the decisions of this court to the effect that a statute passed for the purpose of protecting the revenues of the United States is not to be strictly construed, even where it provides a severe penalty. They are summed up in the

language of this court in *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 17, and in the authorities there cited, and this language also apparently covers the claim that section 184 of the Penal Code is in derogation of common right:

The dogma as to the strict construction of statutes in derogation of the common law only amounts to the recognition of a presumption against an intention to change existing law, and as there is no doubt of that intention here the extent of the application of the change demands at least no more rigorous construction than would be applied to penal laws. And, as Chief Justice Parker remarked, conceding that statutes in derogation of the common law are to be construed strictly, "they are also to be construed sensibly and with a view to the object aimed at by the legislature." *Gibson v. Jenney*, 15 Massachusetts, 205.

The primary object of the act was to promote the public welfare by securing the safety of employees and travelers, and it was in that aspect remedial, while for violations a penalty of one hundred dollars, recoverable in a civil action, was provided for, and in that aspect it was penal. But the design to give relief was more dominant than to inflict punishment, and the act might well be held to fall within the *rule applicable to statutes to prevent fraud upon the revenue*, and for the collection of customs, *that rule not requiring absolute strictness of construction*. *Taylor v. United States*, 3 How. 197;

United States v. Stowell, 133 U. S. 1, 12, and cases cited. And see *Farmers' and Merchants' National Bank v. Dearing*, 91 U. S. 29, 35; *Gray v. Bennett*, 3 Met. (Mass.) 522.

The fair rule governing statutes of this character, allowing to the defendant in error certainly as as much as it can claim, is thus stated by Judge Woodruff in *United States v. 36 Barrels of High Wines*, 7 Blatch. 459, 463:

* * * The statute should be construed reasonably and fairly, and not be made a trap to deceive or catch the innocent and well-intentioned party who endeavors to render full obedience to the law. But I deny that the statute is to be construed strictly in the sense that if, by any possible construction, it may furnish a chance to escape and a means of evasion to the guilty party who is engaged in endeavors to defraud, with the intent and design which constitutes the ground of forfeiture, such construction shall be given to it. * * *

And the same rule was laid down in 1843 by Attorney General Legare in relation to the provisions in the act of March 3, 1825, prohibiting the carriage of letters outside the mails (4 Op. A. G. 159, 161, 162).

II.

Construing section 184 fairly, these letters did not relate "to the current business" of the defendant.

(a) This particular exception was not contained in any previous legislation on the subject, but was

inserted in the Senate, through the efforts of Senator Bacon, of Georgia, while the Penal Code was on its passage there. Its curious language justifies a brief consideration of the prior law. Without pretending to be exhaustive, section 14 of the act of May 8, 1794, to establish the post office and post roads within the United States (1 Stat. 354, 360), provided—

That if any person, other than the Postmaster General, or his deputies, or persons by them employed, shall be concerned in setting up * * * any * * * post * * * on any established post road * * * and shall receive any letter * * * (excepting only such letter or letters as may be directed to the owner or owners of such conveyance, and relating to the same, or to the person to whom any package or bundle in such conveyance is intended to be delivered)

and carry the same, he should forfeit fifty dollars.

Section 12 of the act of March 2, 1799 (1 Stat. 733, 735), extends the prior act to carriage between post towns, but contains the same exception. Section 16 of the act of April 30, 1810 (2 Stat. 592, 596), contained the same exception. The act of March 3, 1825 (4 Stat. 102, 107), by section 19, provided shortly that no stage which regularly performed trips on a post road or on a road parallel to it should carry letters, but that vessels might carry letters which related "to some part of the cargo." Private competition was beginning to be felt, and

by the act of March 2, 1827 (4 Stat. 238), it was found necessary to provide that no person other than the Postmaster General or his authorized agents should set up any foot or horse post for the conveyance of letters upon any post road. Even this strictness was found ineffective, and in the debates in the Senate on the act of March 3, 1845 (5 Stat. 732), it was stated that owing to the extensive and open competition of private expresses the revenues of the Post Office Department had been diminishing, instead of increasing, since 1840 (Cong. Globe, vol. 14, pp. 196, 348). By section 9 of said act, therefore, private expresses were absolutely prohibited to carry the mails, but by section 10 the former exception contained in section 19 of the act of March 3, 1825, relating to ordinary carriage of letters was somewhat broadened so as to read "except such as may have relation to some part of the cargo of such steamboat, packet boat or other vessel, *or to some article at the same time conveyed by the same stage coach, railroad car, or other vehicle.*"

By section 8 of the act of August 31, 1852 (10 Stat. 121, 142), stamped envelopes were provided for, and letters enclosed in such envelopes were permitted to be carried out of the mails on certain conditions.

Section 231 of the comprehensive Post Office Code of June 8, 1872 (17 Stat. 283, 311), repeated the exception in practically the same language as that contained in section 10 of the act of March 3,

1845, and in this form it was carried into the Revised Statutes as section 3985. At some early period the Post Office Department construed section 3985, R. S., as containing also the implied exception of letters that related "to the business of the railroad on which they are carried" (21 Op. A. G. 397), and this construction was sustained by Attorney General Harmon in 1896 (21 Op. A. G. 394). When the Penal Code came to be enacted, section 3985, R. S., was reported as section 185 of the code, and, while certain verbal changes were made and the penalty reduced, the exception was left as it stood in the revision. (Cong. Rec., 60th Cong., 1st sess., p. 973.) Senator Bacon of Georgia at once objected that the section as drawn did not permit the sending outside of the mails of those communications by railroad officials to their employees or officers which were a daily necessity (*ibid.*). Senator Sutherland called his attention to the fact that both the Post Office Department and the Attorney General had construed the existing law as allowing the carriage outside the mails of such communications (*ibid.* p. 1902), but Senator Bacon denied the correctness of this construction and insisted that the law should be made clear (*ibid.* pp. 1903, 1904). The following colloquy then took place (*ibid.* p. 1905):

MR. SUTHERLAND. I was just going to say, when the Senator interrupted me, that that being my opinion as to the meaning of the

law, I would have no objection whatever to inserting, say, in line 7, after the word "vessel," the words "or to the business of the carrier," so that it would read:

"Except such as relate to some part of the cargo of such steamboat or other vessel, or to the business of the carrier, or to some article carried at the same time by the same stage-coach, railway car, or other vehicle."

Mr. BACON. I am willing to have the Senator make it even narrower than that, and say the "current" business, in order that it might not relate to their financial transactions or anything of that kind, but to current business and operations.

Mr. SUTHERLAND. Personally I have no objection to that amendment. I think it would carry out the evident intention of the law, but my colleague on the committee (Mr. Heyburn) does not appear to agree with me with reference to that. I am therefore not in a position to speak for the committee.

Subsequently the amendment in the form it now stands in section 184, Penal Code, was adopted (*ibid.* p. 1976).

It thus appears that from 1825 on Congress has endeavored to protect the governmental monopoly in the carriage of the mails by prohibiting entirely such carriage by private expresses and prohibiting it generally to private parties except in the cases where the letters related to the articles being conveyed at the same time. The reason of the exception evidently was that to compel the carriage

of such letters in the mails would greatly inconvenience the sender, if, indeed, it would not entirely destroy the usefulness of the communication. Such letters, if carried in the mails, would arrive too late to fulfill their purpose.

To this exception the Post Office Department early added another of letters relating "to the business of the railroad on which they are carried." (Sec. 1022, Postal Regs., 1893.) This exception also was based upon the necessities of the case, but even thus it was not sufficient for the author of the present amendment in the Penal Code. This is shown by the illustration Senator Bacon used several times in the debate of a wreck on the road where it became necessary to send immediate directions. The decisive evidence is, however, that he did not desire to except letters relating to the business of the carrier generally, even when this language was proposed by Senator Sutherland, but insisted on inserting the word "current" as a limitation, so that the less pressing business of the carrier, such as its financial business, should not be excepted. The only meaning of the adjective "current" as applicable to "business" which we have been able to find in the dictionaries is "now passing; present in its course; as, the current month or year," and this would appear to be the meaning Senator Bacon had in mind. The "current business" of the carrier, therefore, is that business which is, at any particular time, in the present course of its transaction. Letters in regard to

such business would lose their value if they had to be sent through the mails, for in that event the "business" would cease to be "current"—it would have become past—before the letter was received. Where, however, the business is not passing, but still in the future, it may be efficaciously carried on by communication through the mails and no exception is necessary.

Of course every word of the statute must be given some meaning; "current" was deliberately added as a word of limitation, and it is submitted that the meaning outlined above is the correct one. Moreover, its position in the act, inserted between the exception as to letters relating to the cargo of a vessel and the exception as to letters relating to an article carried at the same time, leads to the same conclusion.

(b) Assuming that this is the proper construction of the term "current business," very little argument is necessary to show that neither of the letters set out in the indictment related to such business. Even if they related to the railroad company's business at all—it will be argued later that they did not—they evidently did not relate to its passing, present business. The first one merely urges the operator to make known to the public the advantages of the telegraph company's service so that business may be increased. The other admonishes him to familiarize himself with the rates charged by the telegraph company, so that errors

may not occur in his accounts. Plainly these are not matters of a character so present or current as to make a communication in regard to them through the mails ineffectual. They are matters of the future to be developed by time, not opportunities to be grasped at immediately lest they pass and are gone forever. It is submitted that if the word "current" is to be given any effect at all as a limitation, these letters must fall outside the exception, for if these relate to "current" business, it is difficult to see why any letter relating to railroad business of any kind or in any way would not equally fall within the exception.

III.

Neither of the letters set out in the indictment related to the railroad company's business.

Under the agreement between the companies attached to the indictment, the relationship between them appears to be that of lessor and lessee. Agreements of this general character have been considered by the courts in several cases, but the relationship of the parties to them does not seem to have been exactly determined. In *Western Union Telegraph Co. v. Penn Co.*, 125 Fed. 67, the court had under consideration an agreement by which the railroad company merely agreed to put up poles on its right of way, the telegraph company to supply the wires, etc., operate the lines, and furnish

service free to the railroad company. No term was set to the contract, and the question was whether it could be terminated on notice. The lower court held it could, stating that "such agreements have been held to create joint enterprises and ownerships." This decision was reversed by the Circuit Court of Appeals (129 Fed. 849), Gray, J., saying (p. 867):

On the whole, we are of opinion that the relations created between the parties by the agreement in question were not merely personal, as in cases of partnership, agency, master, and servant, and the like, but that rights in property and the user thereof, rights in the nature of an easement, were conferred upon the appellant * * *.

In the case at bar the agreement expressly provides that the railroad company "does by these presents let, lease, and demise unto the telegraph company" the right to maintain on its right of way the poles, etc., which are the property of the telegraph company (R. 10), and "does by these presents let, lease, and demise unto the telegraph company" the poles, etc., owned by the railroad company "to have and to hold the same unto the telegraph company, its successors and assigns, during the continuance of this agreement" (R. 11); that is, from October 1st, 1907, until September 30th, 1928 (R. 31). There are a number of mutual considerations for this grant in the agreement, but the main one, and the important one, in relation to

the letters on which the indictment was based is the following (R. 22) :

The telegraph company agrees to pay to the railroad company as soon as practicable after the close of each month 25 per centum of the cash receipts at offices in the railroad company's stations or other buildings received from commercial or public messages of the telegraph company. * * *

The railroad company shall have the right to investigate the accounts of the telegraph company so far as they relate to these earnings.

We have, therefore, a case of a lease where the rental to be paid is not a fixed sum monthly, but a fixed percentage of the lessee's monthly receipts. It is submitted that while such a lease gives the lessor a financial interest in the lessee's receipts, it does not create so intimate a relationship as that the lessee's business, the amount of its receipts, the charges made by it for service become "the business" of the lessor within the meaning of section 184, Penal Code. Evidently the term "the business of the carrier" must have some legal limitation, and can not be extended to all concerns and activities in which the carrier has a financial interest. The argument heretofore made to the effect that section 184 should not be construed strictly, but should be interpreted so as to carry out, as far as possible, the main purpose of Congress, and to prevent generally any evasions through which the evil which Con-

gress intended to prevent might creep in, is applicable with special force to the question of the meaning of the word "business" in section 184. There are many businesses in which a railroad company is financially interested, e. g., the making of comfortable, safe sleeping cars, the operation of good hotels at its stations, the supply of good cab and baggage transfer facilities, the operation of other railroads in which it has a stock interest. In the national parks the railroad companies have an indirect always and sometimes direct interest in the receipts of the hotels, restaurants, boarding houses, and transportation companies. Can it be said, on that account, that "the business" of companies manufacturing sleeping cars, operating cabs and transfer wagons, or that "the business" carried on by various concerns in the national parks, is "the business" of the railroad company? If so, it would be difficult to see why "the business" of all the farmers, manufacturers, and merchants along its lines is not equally "the business" of the railroad company, since it is vitally interested in the growth thereof. Thus the bars would be let down altogether, and a system of private-mail carriage established equaling that of the Post Office Establishment. But if the businesses here referred to can not be deemed "the business" of the railroad company within the meaning of section 184, neither, it is submitted, can the business of the telegraph company in the case at bar be so

deemed, merely because the rental received by the railroad company depends on the amount of business done by the telegraph company, and increases as that increases.

In the opinion of Attorney General Harmon hereinbefore referred to, though he held that the act contained an implied exception of letters relating to the carrier's own business, he refused to extend this exception to letters carried from one connecting carrier to another connecting carrier, though they related to through business, or to letters carried for hotels, restaurants, or any other class of business that might either be connected or not connected with the railroad proper. He said (21 Op. A. G. 400) :

I am unable to reconcile with this view of the law the claim that a company may carry letters from one of its connecting lines to another when they relate to through business over the lines of all. This claim proceeds on the theory that the carrying company's interest, actual or possible, in the subject of the correspondence makes the letter "relate to its business" in the language of the postal regulations. But, as I have said, this language was used with reference to letters sent by or addressed to the carrying company or on its behalf, and the form of expression adopted was doubtless merely intended to exclude private correspondence between persons in the employ of carriers. Otherwise the regulation, like the claim

based on it, would be contrary to the law. In *United States v. Bromley* (*supra*) an order for goods to be brought by a steamboat on its return trip was held to have been wrongfully carried, although the carrier had a direct interest therein.

And again (*ib.* p. 402):

It is manifest that what I have said in denying the right of railroad companies to carry letters between other companies with whose lines their own connect applies also to the carriage of letters by railroad companies for the class of persons, associations, and companies mentioned in your third question, * * *.

The same ruling was made by the Post Office Department on February 23rd, 1887, in regard to an hotel which was a lessee of railroad property and divided its profits with the railroad company (2 Op. Asst. A. G. P. O. Dept. 415), and it may properly be assumed that this has been the departmental construction of the act ever since, the same ruling having been made on December 3, 1890, in regard to letters of the operators to the joint superintendent under a contract between the Pennsylvania Railroad Company and the Western Union Telegraph Company similar to that in the case at bar (2 Op. A. A. G. P. O. Dept. 877).

In the second place, even assuming that the agreement does not constitute a true lease on a rental based on the business of the lessee, yet enough appears in the agreement itself to show

that the parties carefully distinguished between the business of the railroad company and the business of the telegraph company, and that one was in no sense the other. The telegraph company agrees to pay all the taxes on the telegraph property and business. (R. 11.) It agrees to set apart to the railroad company wires "for its exclusive use in matters pertaining to its railroad business" as distinguished from wires used "for commercial or public telegraph business" (R. 14), and to construct additional wires "for the business of the railroad company" (R. 12), and additional provisions as to such wires occur at R. 15, 16, and 17. "Where one wire will suffice for the business of both parties" it is to be used jointly (R. 16), and where such joint wire is not sufficient to accommodate "the business of both parties" an additional wire shall be constructed "for the railroad company's business exclusively" (R. 16). Messages of the railroad company "pertaining to its business" are to be handled free. (R. 18.) Telegraph franks are to be issued to officials of the railroad company "and of *its own* freight and transportation lines relating strictly to the business of the railroad company." (R. 18.) Where, however, the freight and transportation line in question is not "its" (the railroad's) "own," the following significant provision is made (R. 19):

It is further agreed that messages sent upon business of freight and transportation lines in which the railroad company has a

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minor interest, other than those hereinbefore mentioned in this section, shall, to the extent of such interest, be deemed to be upon the business of the railroad company and subject to the provisions in respect to such business herein contained.

On the other hand, the railroad company agrees to transport free officers and employees of the telegraph company "traveling on the business of said telegraph company." (R. 19.)

The telegraph company expressly covenants that the joint superintendent and the operators "shall be deemed, for the purposes of this contract, to be the servants of the telegraph company" (R. 27), and the whole system is to be controlled and regulated by the telegraph company which is to fix all tariffs (R. 28). The joint superintendent is in one district to be the district superintendent of the telegraph company, and in other territory is to be subordinate to the telegraph company's district superintendent "except as to the telegraph business of the railroad company." (R. 28.)

These references show that the parties to this agreement carefully distinguished between "the business" of the railroad company and "the business" of the telegraph company, and never contemplated that the former should be deemed to include the latter. This, it is submitted, coincides with the view which the law would take of the matter apart from the explicit provisions of the contract.

(a) The letter contained in the first count of the indictment.

This letter, it is admitted by the defendant, relates solely to the commercial business of the telegraph company, and not in any aspect to the railroad company's direct or exclusive business. It is covered, therefore, by the general argument heretofore made, since the interest of the railroad company in the commercial business transacted by the telegraph company is limited, as the letter itself points out, to the receipt by the railroad company of twenty-five per centum of the gross receipts of the telegraph company from such business. It does not appear necessary, therefore, to say anything further in regard to this letter than has been said in the general argument.

(b) The letter contained in the second count of the indictment.

This letter, as stated above in this brief, admonishes the station agent and telegraph operator to make himself familiar with the changes which the telegraph company has made in its rates so as to avoid check errors. It is stated that the misquoting of rates creates a large number of error sheets and correspondence, and not only confuses the auditing department of the Western Union Telegraph Company but also delays settlements between the telegraph company and the railroad company.

The letter itself presumably gives the ground upon which the defendant claims that it relates to current railroad business. The statement that the railroad company receives a percentage of the telegraph company's receipts at all Erie Railroad stations is reiterated, but there is added the statement that the agent of the railroad company under the contract also acts as the agent or manager of the telegraph company, and that the handling of commercial telegrams, in making up the telegraph company's reports, from which the railroad company's proportion of receipts is figured, and all of the accounting and correspondence relative to the telegraph company matters are as much the current business of the railroad as handling accounts or reports made in connection with the freight shipments or sale of tickets for the railroad, the railroad company receiving a revenue from all.

This argument apparently has reference to the provision of the contract hereinbefore referred to on page 22 of the record, which gives the railroad company the right to investigate the accounts of the telegraph company so far as they relate to its earnings on commercial messages, and presumably it is considered that this provision, taken in connection with the general provisions of the contract, indicates a joint enterprise or joint business carried on by the railroad company and the telegraph company to such an extent that the business of the one becomes the business of the other within the meaning of section 184 of the Penal Code.

It is submitted, however, that this argument is not sound. In the first place, the provisions as to rendering accounts is only ancillary to the provision giving the railroad company a share of the receipts of the telegraph company from commercial business, and if the latter provision be not sufficient to make the commercial business of the telegraph company the business of the railroad company, the merely ancillary provision as to the manner in which accounts of such commercial business are to be rendered can not have a higher position and be said to relate to the business of the railroad company when the main provision does not. Nor can the fact referred to in the second letter, that the station agents of the railroad company are in many cases the agents of the telegraph company for the receipt and despatch of commercial telegrams and that they do this in connection with their exclusively railroad duties of freight shipments and the sale of passenger tickets, have the effect to make the commercial business of the telegraph company a part of the business of the railroad company in the face of the numerous and explicit provisions of the contract referred to hereinbefore, by which the business of the railroad company is carefully distinguished from the business of the telegraph company, and these station agents are expressly made the agents of the telegraph company when engaged in the business of receiving and despatching commercial telegrams. When the contract is

read carefully as a whole it is submitted that no joint enterprise or business is disclosed by it, but two distinct businesses, whose only connection arises out of physical convenience, it being an advantage to the telegraph company to occupy the railroad company's right of way and use its stations, and it being an advantage to the railroad company to have a telegraph line so situated as to avoid the construction of a line of its own. In the eye of the law, however, the situation is no different from what it would be if the railroad company had constructed its own line and the telegraph company had paralleled it with a commercial telegraph line, or obtained a right by condemnation to use the telegraph company's right of way and its stations for the purpose of sending commercial telegrams. The use of the joint agents and the rendering of accounts and the share of receipts all arise merely from the physical fact that instead of there being two lines as above suggested there is in fact only one, and the necessities of the physical situation require some coordination and cooperation between the parties.

Even if it be admitted that the second letter contains some reference to business which may properly be called the business of the railroad company, yet it does undoubtedly also relate to the commercial business of the telegraph company to some extent. To that extent, as has been argued heretofore, the letter relates to business which is not the

current business of the railroad company. That being the case, it is submitted that the entire letter must be carried in the mails. In other words, the exception in section 184, Penal Code, covers such letters and such letters only as contain exclusively matter relating to the railroad company's business. If a letter be composed partly of matter relating to such business, and partly to other matters not so relating, then, it is submitted, the exception does not apply. (21 Op. A. G. 400 *supra*.) If this were not so, a great space would be left open for evasion of the law. It would be easy for railroad officials to write to each other on purely social matters, or on private business of their own, and secure the carriage of that letter outside the mails by the addition of some trifling allusion to railroad business. Nor can any distinction be perceived between the carriage of a letter relating only in a small degree to railroad business and in a large degree to other business, and the carriage in a mail pouch by the railroad of letters relating to railroad business mixed with letters entirely relating to other business. The law certainly can not stop at a mere formality, at the mere insertion of the letter in an envelope. It can make no difference in principle whether the matter which is carried improperly is contained in a letter which has proper matter in it, or is contained in a mail pouch which has other letters having proper matter in them.

CONCLUSION.

The judgment of the District Court should be reversed, and the case remanded with instructions to overrule the demurrer.

JOHN W. DAVIS,

Solicitor General.

WILLIAM WALLACE, Jr.,

Assistant Attorney General.

NOVEMBER, 1914.



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DEC 5 1914

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 552.

UNITED STATES,
Plaintiff in Error,
vs.

ERIE RAILROAD COMPANY,
Defendant in Error.

BRIEF FOR THE ERIE RAILROAD COMPANY.

RUSH TAGGART,
Attorney for Erie Railroad Company.

C. G. BURGESS, 72 to 75 Spring Street, New York.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 552.

UNITED STATES,
Plaintiff in Error,

vs.

ERIE RAILROAD COMPANY,
Defendant in Error.

This is a writ of error sued out by the United States for the purpose of reviewing the judgment of the District Court of the United States for the Southern District of New York, sustaining the demurrer of the Erie Railroad Company to an indictment and dismissing the same.

The indictment was based upon section 184 of the Penal Laws of the United States reading as follows :

“ Whoever, being the owner, driver, conductor, master or other person having charge of any stage coach, railroad car, steamboat or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town or place to any other city, town or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packages except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the carrier, or to some article

carried at the same time by the same stage coach, railroad car or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars."

There are two counts to the indictment in this case, the first based upon a letter dated June 27, 1912, written by Mr. E. P. Griffith, Superintendent of Telegraph, to Mr. G. A. Osborne, Agent of the Erie Railroad Company and Manager of the Western Union Telegraph office at Montgomery, Orange County, New York. This letter will be found at page 4 of the record.

The second count is based upon a letter from the same party to the same party of the same date, and is found on page 7 of the record.

These letters were sent upon a train of the Erie Railroad Company upon one of the post routes of the United States, without payment of postage, and in what is known as the railway or train mail, and the claim on the part of the Government is that the same did not relate to the "current business" of the Erie Railroad Company and did not relate to any article carried at the same time by said railroad or by the train of which the said railway car was a part.

The following are the facts set forth in the indictment.

On the 25th of September, 1907, the Western Union Telegraph Company and the Erie Railroad Company, acting for itself and on behalf of a number of other railroad companies, entered into an agreement for the construction, operation and maintenance of telegraph lines along the lines of railroad owned or controlled by the railroad companies. This contract, (found at pages 9 to 51 of the record), was for the period of 21 years, and defines the territory within which it should apply, recites various schedules indicating the mileage of the railroads; the poles, wires and other appurtenances owned by the telegraph company; along said railroads; and the poles, wires and other appurtenances owned or operated by the railroad company along said railroads. It recites the prior contacts under which the telegraph lines had been operated, and the contract then defines the covenants of the contracting parties as follows:

(1) That the railroad company's telegraph lines should be leased to the telegraph company during the period of the con-

tract, subject to the conditions named therein. All such telegraph lines thus leased, together with the telegraph lines owned or controlled by the telegraph company were to be in all respects subject to the conditions of the contract and to be maintained as provided therein (Record, p. 10).

(2) The second article provides that the telegraph company shall furnish all poles, wires, insulators and other materials, tools and certain labor for the construction of any new lines which may be required during the term of the contract, and the telegraph company also agrees to furnish material and labor for the maintenance, repair and reconstruction of all the lines, poles and wires which were the subject matter of the agreement, such maintenance, repair and reconstruction to be under the direction of a joint superintendent, provided for in the contract. This article also provides the extent to which the railroad company was to contribute to this work of construction, reconstruction, repair and maintenance, and also provides with respect to the rights of the railroad company to string railroad signal and telephone wires upon the poles.

(3) The third article provides for the distribution between the parties of the uses of the existing wires upon and along the lines of railroad, and the contributions of each in case additional wires are required by either.

(4) By the fourth article provision is made for the transmission by the telegraph company of messages relating to the railroad company's business upon lines of telegraph not situated upon the lines of the railroads covered by the contract.

(5) By the fifth article provision is made for the transportation over the railroads covered by the contract of employees of the telegraph company traveling on the business of the company, and also for the transportation of material for the construction, maintenance, operation, repair and reconstruction of the lines of wires which are the subject matter of the contract, and also for the equipment, maintenance and operation of telegraph offices of the telegraph company and the railroad company along the line of said railroad.

(6) The sixth article provides for the opening of telegraph offices by either party at such stations on the railroads covered by the agreement as either party may deem necessary, and the important agreement is made that at all such offices which the railroad company may establish for its railroad business the

telegraph company is required to furnish the equipment and may have the operators in the employ of the railroad company receive, transmit and deliver for the telegraph company such commercial or public telegraph messages as may be offered, and the railroad company is required to render to the telegraph company monthly statement of such business and pay over the receipts therefrom. Twenty-five per cent. of the cash receipts of such offices established in railroad stations is to be returned to the railroad company at the close of each month.

(7) Article seven gives the right to the telegraph company, under certain conditions, to establish its own independent offices in any of the stations and have its own operator for the transaction of commercial business at such offices.

(8) The eighth article relates to the right of way furnished the telegraph company and the manner of its use by the telegraph company.

(9) The ninth article relates to the release from liability of the respective parties to the contract under certain conditions.

(10) The tenth article relates to patent rights owned by the telegraph company and the railroad's right to use patented instruments.

(11) The eleventh article provides that all the telegraph lines, poles, wires and fixtures shall be operated as a part of the general telegraph system of the telegraph company, and shall be controlled and regulated by the telegraph company, which shall fix and determine all tariffs for the transmission of messages and connections with other lines and interests.

(12) The twelfth article provides for the appointment of a joint superintendent of telegraph by the railroad company subject to the approval of the telegraph company, his salary to be equally divided between the parties, such joint superintendent to have supervision and control of the telegraph lines and wires, and of the offices and operators in the railroad stations along the railroads covered by the contract. This joint superintendent is equally the servant of the railroad company and the telegraph company, and is subordinate to the telegraph company's district superintendent in certain territory outside of the second district, which is defined, except as to the telegraph business of the railroad company; he is to enforce the telegraph company's rules, regulations and orders in regard to the construction, maintenance, repair

and reconstruction, operation, arrangement and management of the telegraph lines and wires, and the transaction of commercial telegraph business. The general expense of said joint superintendent's office (other than that strictly applicable to handling reports of commercial telegraph business and to railroad business other than telegraphing), is to be divided equally between the parties.

This contract, of which the foregoing are the essential elements, was in force on the 27th of June, 1912, and Mr. G. A. Osborne was the agent of the Erie Railroad Company at Montgomery station, in Orange County, New York, on a branch line running from Goshen to Montgomery, and was also the railroad telegraph operator at that point. His salary was paid by the Erie Railroad Company. The Western Union Telegraph Company had exercised its right under the sixth article of the contract, to have said railroad operator receive and transmit for the telegraph company such commercial messages as might be offered at Montgomery. The two letters which are the basis of the indictment herein were written by Mr. E. P. Griffith, Joint Superintendent of Telegraph of the Railroad and Telegraph Company, appointed under the provisions of the contract, and addressed to Mr. G. A. Osborne, operator of the railroad company, acting also as manager for the telegraph company under the provisions of the contract. The letter upon which the first count of the indictment rests is with respect to the inauguration of a new commercial telegraph service known as day and night letters, and the letter upon which the second count rests calls attention to some changes in the tariff book and the importance of avoiding errors in the quoting of rates for messages which had been received and transmitted and the avoidance of errors in accounting resulting from.

The decision of the District Court was that both of these letters related to the "current business" of the carrier, and that therefore there was no violation of Section 184 of the Penal Laws by sending these letters by railway or train mail without the payment of postage (Record, p. 52).

ARGUMENT.

Both of the letters in question relate to the "Current Business" of the Erie Railroad Company and therefore there has been no violation of Section 184 of the Penal Laws of the United States.

It is stated in each of the counts of this indictment that a telegraph line along and upon the right of way of the railroad company, connecting practically all of the cities and villages, is an essential instrumentality for the safe and successful operation of the railroad and the movement of trains, and that the construction of such a line of telegraph involves a large expense. The indictment also clearly shows that a telegraph system, to serve the public properly, should not only connect the large commercial centers between which the bulk of the commercial public telegraphing is done, but should also reach the smaller towns and villages and afford facilities for communications between such towns and villages and such large commercial centers; also that the telegraph business at the majority of these smaller towns and villages is wholly insufficient to justify the construction and operation of telegraph lines and offices if their support depended solely upon the revenue from commercial business at such points, and that these conditions have almost from the beginning of the use of the telegraph, compelled the combination between railroad companies and telegraph companies, and the making of contracts along the general lines of the contract between the Erie Railroad Company and the Western Union Telegraph Company which is set out in full in the indictment in this case.

By this means a line of telegraph, such as would be required by each of the parties is made available for the use of both, and the line which furnishes the facilities necessary for the operation of the railroad also affords means of telegraphic communication between the large trade centers and the smaller communities throughout the country.

Under this contract the conduct of the commercial telegraph business at Montgomery, consisting of the receipt, transmission and delivery of commercial messages, and the accounting for the revenues received therefrom, is made the obligation of the railway company through its railroad operator, who, for the purpose in question, was constituted the agent of the telegraph company, but whose salary is paid by the railroad company solely, and who is subject to the orders and discipline of the railroad company alone, unless the order or direction of the joint superintendent of telegraph should be considered that of the telegraph company.

It is clear that no question can be made as to the validity and legality of the contract between the railroad company and the telegraph company for the construction, maintenance and operation of telegraph lines, available for use by both parties to the contract. The railroad company, requiring such instrumentality for the operation of its railway lines, was at liberty to procure it in the most economical manner, either by the purchase of materials and the hiring of labor skilled and unskilled necessary for the construction of a telegraph line, its equipment with the necessary apparatus and instruments, and its operation by its own operators, or, by a contract with the telegraph company, securing the construction, operation and maintenance of the necessary lines, or, as in this case, by joining with the telegraph company in the construction, maintenance and operation of the line, dividing the expenses in such a way as to secure the most efficient and economical results.

Section 5263 of the Revised Statutes of the United States reads as follows :

“ Any telegraph company now organized, or which may hereafter be organized under the laws of any state, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by law, and over, under or across the navigable streams or waters of the United States, but such lines of telegraph shall be so constructed and maintained as not to ob-

struct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads."

While this section has been construed by this court in *Western Union Telegraph Company vs. Pennsylvania Railroad Company*, 195 U. S., 540, as not granting the right to a telegraph company to acquire by eminent domain the right to construct its telegraph lines along the right of way of a railroad without the consent of the railroad company, yet that decision and other decisions necessarily recognize the clear right on the part of the telegraph company to contract with a railroad company for the construction, maintenance and operation of lines of telegraph along its right of way, and that, of necessity, implies the right of the railroad company, on its part, to make such contract with the telegraph company, as shall be mutually beneficial to the parties to the agreement.

Pensacola Tel. Co. vs. Western Union Tel. Co., 96 U. S., 1.

W. U. T. Co. vs. Massachusetts, 125 U. S., 530.

U. S. vs. U. P. Ry. Co., 160 U. S., 1.

Western Union Tel. Co. vs. Penn. R. R. Co., 195 U. S., 540.

In addition to the foregoing we have the express recognition by Congress of the legality of such contracts in the Amendment to the Act to regulate Commerce of June 18th, 1910, which in the first section expressly provides that "Nothing in this Act shall be construed to prevent telephone, telegraph and cable companies from entering into contracts with common carriers for the exchange of services." This feature figured largely in the contract set forth in the indictment and the other features of the contract were fairly incident to this exchange of service.

If, therefore, the right of the parties to make the contract in question be conceded as we think it must be, the obligation of the railroad company, through its operator, to receive and transmit at Montgomery, New York, commercial telegraph messages for the Western Union Telegraph Company, and the right on the part of the telegraph company and the railroad company to provide for the appointment of Mr. E. P. Griffith to take charge of the maintenance and operation of these tele-

graph lines and wires and of the offices and operators in railroad stations including Montgomery is definitely established.

It is important, then, to get an accurate idea of just what the situation was at the office at Montgomery in view of the contract provisions controlling the same.

The parts of the 6th article of the contract which controls the establishment of that office are as follows :

" At all telegraph offices of the railroad company now or hereafter maintained in its railroad stations the railroad company shall, at its own expense, furnish office room, light and heat for telegraph service, and shall also, at its own expense, provide an operator and other employes, who, acting as agents of the telegraph company, shall receive, transmit and deliver, exclusively for the telegraph company, such commercial or public messages as may be offered, and shall charge the tariff rates of the telegraph company thereon, and shall render to the telegraph company monthly statements of such business and full accounts of all receipts therefrom, and the railroad company agrees to pay all of such receipts to the telegraph company in such manner and at such times as the telegraph company may direct, but the railroad company shall not be responsible for the failure of its operators to pay over such receipts. And said operators and other employes shall not, without the consent of the telegraph company, transmit over said telegraph lines any free messages except those herein provided for, and concerning all telegraph business, whether paid or free, shall conform to all rules, regulations, and orders of the telegraph company applicable thereto. * * *

" The telegraph company agrees to pay to the railroad company as soon as practicable after the close of each month, 25 per centum of the cash receipts at offices in the railroad company's stations or other buildings received from commercial or public messages of the telegraph company; except that all tolls on ocean cable messages and tolls or charges of other companies shall be retained by the telegraph company, which shall make settlement therefor with connecting

lines, but the telegraph company shall not be responsible to the railroad company for its said proportion of any such cash receipts which its operators fail to pay over to it. The railroad company shall have the right to investigate the accounts of the telegraph company so far as they relate to these earnings. In case the telegraph company shall fail to make the monthly payments to the railroad company as herein provided and shall remain in default for a period of ninety days, after notice and demand in writing, the railroad company may retain from the cash receipts the sums to which it may be entitled instead of paying the same over to the telegraph company as hereinbefore provided " (Record, pp. 21, 22).

In the 12th article, we find the following :

"It is further agreed that the management and maintenance of the telegraph lines and wires, and of the offices and operators in railroad stations, along the railroads covered by this agreement, the constructions, maintenance, repair and reconstruction of the lines and wires, and the distribution of material for use on said railroads, shall be under the supervision and control of a competent joint superintendent of telegraph, who shall be appointed by the railroad company, subject to the approval of the telegraph company, and shall be paid jointly and equally by the railroad company and the telegraph company, and whose salary shall be fixed by mutual consent the railroad company paying one-half thereof and the telegraph company the other half thereof " (Record, p. 28).

As appears in the indictment, Montgomery is a railroad office at which G. A. Osborne was the agent of the railroad company and its telegraph operator placed there primarily for the purpose of operating the telegraph wires relating to the operation of trains of the Erie Railroad Company. The telegraph company had exercised the privilege given it under article 6 of the contract above quoted, and said Osborne was

also duly charged with the receipt, transmission and delivery of such commercial messages as might be offered. The compensation of Osborne was paid by the railroad company alone, no part being paid by the telegraph company.

Shortly prior to the date of the indictment the telegraph company had inaugurated a new or additional service known as day and night letters, and in the opinion of the Joint Superintendent of Telegraph, the attention of the public at Montgomery had not been sufficiently called to such new service as there had not been the increase in the business there which had been anticipated on account of such new service. Therefore, upon the 27th day of June, 1912, the Joint Superintendent of Telegraph wrote a letter to the agent of the railroad company thus employed by it, urging the desirability of some activity on his part in bringing to the attention of the community at Montgomery the advantages of this new service. This letter does relate to the commercial telegraph service rendered at the railroad office by the railroad operator, and was transported in the railway mail of the Erie Railroad Company without the payment of postage, and the question is therefore whether under section 184 of the Penal Laws of the United States, this letter related to the current business of the Erie Railroad Company. If it did the action of the court below in sustaining the demurrer to the indictment was correct; if it did not relate to the current business of the railroad company then the action of the court below was erroneous.

This section 184 of the Penal Laws has not received judicial construction so far as can be learned. It is practically a re-enactment of section 3985 of the Revised Statutes of the United States in force for a great many years before the codification of the penal laws, and which read as follows:

"No stage coach, railway car, steamboat or other vehicle or vessel which regularly performs trips at stated periods on any post-route, or from any city, town or place to any other city, town or place, between which the mail is regularly carried, shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, or to some article carried at the same time by

the same stage-coach, railway car or other vehicle, except as provided in section three thousand nine hundred and ninety-three; and for every such offense the owner of the stage-coach, railway car, steamboat, or other vehicle or vessel shall be liable to a penalty of one hundred dollars; and the driver, conductor, master, or other person having charge thereof, and not at the time owner of the whole or any part thereof, shall for every such offense be liable to a penalty of fifty dollars."

Under that section, Attorney General Harmon, upon reference of the question to him by the post-office department, ruled that said section was only intended to prohibit the transportation of communications between third parties, and that it did not prohibit the transportation of communications, whatever their substance, belonging to the carrier or relating to its business.

He quotes a section of the Postal Laws and Regulations to the effect that Sections 3985 and 3993 excepts from their prohibitions letters and packets which "relate to the business of the railroad on which they are carried," and that this clause has been in all the postal regulations for many years, and had become the settled construction by the Department of the postal laws on this subject. This he stated carried out the intention of the law.

His ruling in effect was that letters and packets relating to the business of the railroad on which they are carried may be carried by such railroad outside of the mails, and that the right is to carry letters written and sent by the officers and agents of the railroad company which carries and delivers them, about its business, and that they may be letters to others of its officers and agents, to those of connecting lines, or to anyone else so long as no other carrier intervenes (21 Op. Atty. Gen., 394).

In the codification the qualification which Attorney General Harmon thus read into the law, *i. e.*, that letters and packets relating to the business of the carrier might properly be carried without the payment of postage, was inserted, and the terms "to the current business of the carrier" were carried into the act as a part of section 184 of the Penal Code, this being practically an affirmance of the construction placed by

Attorney General Harmon upon section 3985 of the Revised Statutes.

This was the ruling of Attorney General Wickersham when the question of the meaning of Section 184 was brought before him.

No especial importance or significance can be attached to the word "current" as used in the statute under the state of facts presented by this indictment. The transaction of the commercial telegraph business at the Montgomery station was a daily affair, and it was therefore within the meaning of the term "current,"—*i. e.*, the regular daily transaction of business or affairs. Thus, "current expenses" of a railroad company in the hands of a Receiver in mortgage foreclosure proceedings are those incurred within a reasonable time anterior to the foreclosure (*Thomas vs. Peoria, etc., R. R. Co.*, 36 Fed. Rep., 808-819).

In *State vs. Board of Education*, 68 N. J. Law, 496, the phrase "current expenses" is held to be identical with "running expenses," and in *Taylor vs. Mayo (Taylor vs. Davis)*, 110 U. S., 330, this court defined "current expenses" as the term was used in a contract relating to certain trustees of property agreeing to pay over all the money received into their hands as trustees after paying therefrom all taxes and "current expenses" of such property to mean *ordinary expenses*.

The question for decision, therefore, is whether under a fair meaning of the words the commercial business at Montgomery station relates to the "ordinary business" of the railroad company, or to the "current business" as the words are used in Section 184?

By the contract the railroad is obligated through its own operators to carry on this same commercial telegraph business by having its operator receive, transmit and deliver such public or commercial business as may be offered. This means that the railroad company will cause such commercial telegraph business to be handled in a manner which will commend it to the public generally, and, altogether apart from the participation of the railroad company in the revenues resulting from such commercial business, the fact that it had thus properly and legally undertaken to transact such business made the doing of such business a part of its "ordinary" or

regular business at that station just as much as the receipt of freight or the sale of passenger tickets to persons intending to take passage upon its trains, and it was the duty of the railroad company to see that Osborne as its agent at that point, conducted its business transacted there under the provisions of the contract just as efficiently and with as much care as he performed any other duties. The right of disciplining Osborne was committed to the railroad company through its joint superintendent of telegraph, although such discipline was applied with respect to carrying on the work of transmitting messages under the rules and regulations which the telegraph company had established for the prosecution of such commercial business.

It may be claimed that the sixth article expressly provides that in thus acting Osborne was the agent of the telegraph company. The language of the contract limits this agency to the three acts, to "receive, transmit and deliver" commercial messages. All the other acts incident to the commercial business at Montgomery, including bringing to the attention of the public the news service would be as agent of the Erie Railroad Co. and in no respect as agent of the telegraph company.

At page 27 of the brief on behalf of the Government, it is stated, with respect to the first letter, that—

"This letter, it is admitted by the defendant, relates solely to the commercial business of the telegraph company and not in any aspect to the railroad company's direct or exclusive business."

At pages 30-31 of the brief, with respect to the second letter it is said :

"Even if it be admitted that the second letter contains some reference to business which may properly be called the business of the railroad company, yet it does undoubtedly also relate to the commercial business of the telegraph company to some extent. To that extent, as has been argued heretofore, the letter relates to business which is not the current business of the rail-

road company. That being the case, it is submitted that the entire letter must be carried in the mail. In other words the exception in section 184, Penal Code, covers such letters and such letters only as contain exclusively matter relating to the railroad company's business."

This is however reading into the language of Section 184 language not found there: It is interpreting the section as though Congress had enacted it employing the words, "relate exclusively to the current business of the carrier." If Congress had so intended the Act to be applied it would have so stated. If the letter had been sent by the General Freight Agent to Osborne with reference to a shipment of freight to or from Montgomery which had been lost and for which claim was presented by shipper, it is difficult to see upon what ground the Government could claim that the railroad company could not send the letter by railway mail. In such case the railway company would not be the only interested party. The shipper would also be interested and then it is easily conceivable how in such case, the letter would relate to his business just as directly as the letters set forth in the indictment related to the business of the telegraph company. If the letter relates to the business of the railroad company, even although it also relates to the business of the telegraph company, it is within the saving clause of this penal section.

What has been said with respect to the letter thus forming the basis for the first indictment applies with even greater force to the letter on which the second count is based. Not only is the Erie Railroad Company, under its contract, obligated to transmit commercial messages, but it is also required to keep accurate accounts of the same to be furnished monthly to the telegraph company, and to turn over all the receipts from such messages. This second letter relates to the effects of the misquoting of rates, and impresses upon the railroad operator the importance of abiding by the rules governing the rates and accounting rules in order to avoid expense, not only to the railroad company, but to the auditing department of the telegraph company.

At page 21 of the Government's brief, the interest of the

Erie Railroad Company in the commercial telegraph business is thus stated :

“ We have, therefore, a case of a lease where the rental to be paid is not a fixed sum monthly, but a fixed percentage of the lessee's monthly receipts. It is submitted that while such a lease gives the lessor a financial interest in the lessee's receipts, it does not create so intimate a relationship as that the lessee's business, the amount of its receipts, the charges made by it for service become ‘the business’ of the lessor within the meaning of section 184, Penal Code.”

This is not, however, an accurate definition of the interest of the Erie Railroad Company in the commercial telegraph business transacted at the Montgomery station and other stations similarly situated along the line of the railroad. The Erie Railroad Company has other interests and connections with this business than the mere receipt of twenty-five per cent. of the cash receipts arising from the commercial telegraph business. If in the case put in the Government's brief there had been added the important fact that the lessor through its own employes was transacting the business, the receipts of which were divided, the case put would be like the case at bar. The railroad company itself is required to transact this commercial business at Montgomery as a part of its general obligations under the contract providing for the maintenance and operation of a line of telegraph which is essential to the performance by the railroad company of its duties to the public as a carrier of passengers and freight.

It is, therefore, the business of the Erie Railroad Company which is thus being carried on, and it is in all essentials a joint business which is being transacted at Montgomery station in which the railroad company participates and which it is required to conduct under the general rules and regulations which the telegraph company has adopted for the transaction of this commercial business. These rules and regulations of the telegraph company become for the time the rules and regulations of the railroad company in the conduct of the commercial business.

The 6th section of the contract also provides :

" Either party may discontinue any of its offices at its pleasure. If the telegraph company removes its office from one of the railroad company's stations, the railroad company shall still have the right to continue doing a commercial business in said station, and the telegraph company will provide the usual signs for such business, but in such case the railroad company will not solicit business in competition with the telegraph company."

This commercial business thus provided for is the business which would necessarily be conducted under the rules and regulations of the telegraph company, because such business would be transmitted to the offices of the telegraph company wherever situated, and the method of transmitting, checking, charging and accounting for such business would necessarily be the same as before the telegraph company removed its office from the station.

So, likewise, with respect to the illustration in the Government's brief (page 22) as to the railroad company having an indirect or other interest in the receipts of hotels, restaurants, boarding houses and various transportation companies.

Whether letters relating to such enterprises may properly be carried in the railway mail under section 184 Penal Code, would depend entirely upon the nature of the railway company's interest and the method of transacting the business.

If the railroad company was itself operating a hotel through its own employees, or was itself operating a sleepingcar service through its own employees, as the commercial telegraph business in this case, although the sleeping cars were owned by another company and that other company entitled to a proportion of the earnings because of the fact that it contributed the use of its cars, then the railroad company would not only have a direct interest in the business thus conducted, but the business would also form a part of its "current business" and letters relating thereto would without doubt be properly carried in the railroad mail, just as letters relating to any other current business of the carrier.

Of course an *indirect* interest, such as Attorney-General

Harmon refers to in his opinion, as in the case of carrying letters for an outside carrier, or letters carried for hotels, restaurants, independently conducted by a third party, etc., would not justify their carriage in the railway mail, just because of such indirect interest, and also because the carrier is not engaged (as it is in the case at bar) in the direct operation of the business through its own employees.

On page 26 of the brief for the government reference is also made to the provisions of article 9 of the contract to the effect that the persons engaged in the work under the contract shall be deemed for the purposes of the contract to be the servants of the telegraph company.

It is but necessary to read the entire article to see that it has no application to the situation in the case which has arisen under section 184 Penal Code.

Article 9 of the contract defines the liabilities of the parties each to the other, and provides for each indemnifying the other under certain conditions, and the language used in the article is limited by the subject matter of the article.

In order that the court may see at a glance that such is the case, we quote the provisions of that article to which reference is made :

“ The telegraph company expressly covenants and agrees that the joint superintendent and all other persons engaged in the work in this agreement contemplated, whether provided or paid by the telegraph company or the railroad company shall be deemed for the purpose of this contract to be the servants of the telegraph company, except when engaged in the work of transmitting messages for the railroad company, and of constructing and maintaining the signal wires, cables and telephone wires for the railroad company, provided for in section second, clause eight hereof ; and the telegraph company assumes all liability for and agrees to indemnify and save harmless the railroad company against, of and from all loss, damage, or injury of or to person or property sustained by the parties hereto, or either of them, or by the said servants or any of them, or by third parties, arising out of the negligent or other acts or omissions of the said

servants, or out of defects in the material furnished by the telegraph company as herein provided, or otherwise, in the transaction of the business herein contemplated ; provided, however, nothing in this paragraph contained shall be deemed to require the telegraph company to be liable for or to indemnify the railroad company against any loss, damage or injury to person or property or passengers of the railroad company or to property of third persons in the hands of the railroad company for transportation, except in case of negligence of the telegraph company or its said servants."

It is quite clear, that this provision simply provides that the persons named shall be deemed servants of the telegraph company for the purpose of fixing liability as between the parties to the contract to each other, or to third parties, for the whole provision quoted deals with the question of liability as between the parties to the contract and to others for the acts of the parties and their servants. It has no application to the question before us as to whether the situation arising under the contract between the telegraph company and the railroad company is such that, in view of the status of that contract and all the surrounding circumstances, the transaction of such business at the office at Montgomery may properly be said to be the "current business" of the railroad company.

The action of the court below in determining that these two letters related to the current business of the railroad company was, therefore, clearly correct and justified by the facts set forth in the indictment.

The action of that court should therefore be affirmed.

Respectfully submitted,

RUSH TAGGART,

Attorney for Erie Railroad Company.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 552.
v.	
ERIE RAILROAD COMPANY.	

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR THE UNITED STATES.

(a) The main part of the brief on behalf of the defendant in error is taken up with the argument that the railroad company is obligated, under the contract with the telegraph company, to carry on the commercial telegraph business, that it is carrying on such business *through its own employees*, and is bound to see that such business is carried on to the satisfaction of the public, irrespective of its interests in the receipts from the commercial telegraph business, and that therefore the commercial telegraph business of the telegraph company is the railroad company's "business."

Thus, on pages 13 and 14 of brief it is said:

By the contract the railroad is obligated through its own operators to carry on this same commercial telegraph business by having its operator receive, transmit, and deliver such public or commercial business as may be offered. This means that the railroad company will cause such commercial telegraph business to be handled in a manner which will commend it to the public generally; and, altogether apart from the participation of the railroad company in the revenues resulting from such commercial business, the fact that it had thus properly and legally undertaken to transact such business made the doing of such business a part of its "ordinary" or regular business at that station, etc.

And again, on page 16 of the brief, it is said:

* * * If in the case put in the Government's brief there had been added the important fact that the lessor through its own employees was transacting the business, the receipts of which were divided, the case put would be like the case at bar. The railroad company itself is required to transact this commercial business at Montgomery as a part of its general obligations under the contract, etc.

And a like statement is made in the last paragraph on page 17 of the brief.

It is submitted that this argument is not sustained by the contract, which does not provide that the railroad company shall carry on the commer-

cial telegraph business. On the contrary, article 8 of the contract (R. 23), expressly provides that the railroad company grants to the telegraph company the exclusive right to conduct commercial or public telegraph business, and (Rec. 26), that it is intended to give to the telegraph company the exclusive right to construct, maintain and operate telegraph lines for commercial or public telegraph business on the right of way of the railroad company. All that the railroad company agrees to do with reference to the conducting of the commercial telegraph business is found in article 6 (R. 21), providing that at all telegraph offices maintained in the railroad stations the railroad company shall, at its own expense, furnish office room, light and heat for telegraph service, and shall also, at its own expense, provide an operator and other employees. But it is expressly stipulated that these operators are the agents of the telegraph company in receiving, transmitting, and delivering commercial or public messages; that they must charge the tariff rates prescribed by the telegraph company; must render reports to the telegraph company of their receipts, and must conform to all the rules, regulations, and orders of the telegraph company applicable to such business. That the telegraph company and not the railroad company is carrying on the commercial telegraph business is made plain in a prior paragraph of Article 6 (R. 21), providing that if the telegraph company removes its office from one of the railroad company's stations, "*the*

railroad company shall still have the right to continue doing a commercial business in said station."

This clearly shows that, so long as the telegraph company continues to operate its office at the railroad station, *it*, and not the railroad company, is doing the business there.

In addition, Article 9 of the contract (R. 27) expressly provides that the joint superintendent and all other persons engaged in the work contemplated in the agreement, whether provided or paid by the telegraph company or the railroad company, "*shall be deemed for the purposes of this contract to be the servants of the telegraph company.*" It is said that this provision merely relates to the liability of the railroad company to the telegraph company or to third persons, but it is submitted the provision can not be so read. (*United States v. Portale*, 235 U. S. 27.) It is a general clause fixing the status of the joint superintendent and the operators for all purposes and should be read in connection with the provision of Article 6 (R. 21), hereinbefore quoted, and also in connection with the provision of Article 11 (R. 27, 28), providing that the commercial wires shall be operated as a part of the general telegraph system of the telegraph company, and shall be controlled and regulated by that company; and also in connection with the provision of Article 12 (R. 28), providing that the joint superintendent is to enforce the telegraph company's rules and regulations and its orders in regard to the operation of the telegraph

lines and the transaction of the commercial telegraph business. Indeed, the enclosure with the letter set forth in the second count of the indictment (R. 8, 9) is a general order from the manager of the telegraph company prescribing certain rules for the management of the commercial business, rules as applicable to telegraph stations not in a railroad station as to those which are in railroad stations.

Moreover, Article 6 (R. 21) provides that, whenever the telegraph business at a railroad station becomes so large that one operator can not attend to it, the telegraph company may employ its own operator, although the railroad company still receives its share of the gross receipts from such office. Plainly in such case the operator would not be the employee of the railroad company, nor could it be said that the railroad company was carrying on the commercial business at such a station; yet clearly the situation of such a station does not differ in principle, or in the application of section 184 of the Penal Code, from that obtaining at an ordinary railroad station where there was merely one operator. Also by Article 7 (R. 23), the telegraph company may establish an independent office in a terminal or way station of the railroad company, at which office again the railroad company furnishes room, light and heat free of charge, and receives 25% of the commercial business, and yet it certainly could not be said that at such an office the business was being carried on by the railroad company.

The defendant in error seems to realize the difficulty in the argument on page 14 of its brief. It there admits that the station agent is the agent of the telegraph company to "receive, transmit and deliver" commercial messages; but asserts that he is not the agent of the telegraph company in bringing to the attention of the public the value of its service. If, however, he be its agent for the former purpose, *a fortiori* must he be its agent in doing the incidental work of drumming up trade.

It is submitted, therefore, that the argument on this point by the defendant in error, finds no support in the contract.

(b) The contention of the defendant in error on pages 14 and 15 of its brief that if *any portion* of a letter alleged to have been carried in violation of law, appertained to the current business of the railroad company, then the company could not be reached under the statutes drawn in question, is unworthy of serious consideration. If sustained, it would permit the mailing of obscene matter if incorporated with matter not obscene, notwithstanding the provisions of section 213 of the Criminal Code; the transportation in interstate commerce of explosives if included in a package containing permissible matter, notwithstanding the prohibition of section 232 of the Criminal Code; or like transportation of impure food if included in a package containing healthful articles, notwithstanding the prohibitions of the so-called "Pure-Food Act" of June 30, 1906 (34 Stat. 768).

In *Dunlop v. United States*, 165 U. S. 486, which was a conviction for depositing obscene matter in the mails, the obscene matter consisted of mere advertisements in a legitimate newspaper placed in the mails. In *Ryan et al. v. United States*, 216 Fed. 13, 20, 26, 27, 52, which was a conviction for conspiracy and for carrying dynamite in interstate commerce, the explosive was carried in suit cases, and carrying cases, which cases, without the dynamite, could, of course, have been rightfully carried. In *Alberty v. United States*, 162 U. S. 501, 502, the court refused to read "Indian" in an exception, so as to include a person having *part only* of Indian blood in his veins.

Let us assume two separate letters written the same day by a railroad superintendent to a station agent, and each placed in a separate envelope, the one enquiring about lost freight, the other as to the payment of a past due note owing personally from the latter to the former. It will be agreed at once that the former letter could while the latter could not be carried in the railway mail. But suppose that instead of putting these letters in separate envelopes, the writer sealed them both in a single envelope, or added the note feature as a postscript at the foot of the same single sheet used for the freight letter. May he by *his own act*, in thus so confusing the two as to make separation impossible, enlarge his rights against the postal laws? If so any person should be permitted to send a newspaper, on the

margin of which he had written about a promissory note, at newspaper rates of postage.

These illustrations—and many more might be cited—demonstrate conclusively that where the carrying of matter in mails or interstate commerce is unlawful its carriage cannot be rendered lawful by incorporating it with matter not condemned by the statute. The confusion of permitted and prohibited matter does not, as defendant supposes, render the *whole* shipment lawful, but works a directly contrary result. The prohibitory element permeates and condemns the whole.

It is said on page 15 that the Government's argument has the effect of interpolating words into the statute so that it shall read "except such as relate *exclusively* to the current business of the carrier." This is a misconstruction of the Government's argument, which (as stated in the extract given on pages 14 and 15 of the brief) contended that the exception applied only to such letters as *contained* "*exclusively*" matter relating to the railroad company's business. Of course every letter relates to both the business of the sender and the receiver, and therefore relates to the business of two persons at least, but the Government's contention is that the whole of the letter must relate to the railroad company's business, whether that company be the sender or the receiver of the same. The letter as to assumed lost freight (its brief p. 15) could be carried outside the mails according to the Government's contention, since it contains *exclusively* matter

relating to the railroad company's business, but if it also contained matter relating, not to the railroad company's business, but to the *private business of the shipper*, the letter could not be so carried. The defendant in error's argument is that the statute should be changed so as to read "except such as relate either in whole or *in part* to the current business of the carrier." This, it is submitted, is contrary to the *intent* of the act. In *United States v. Freeman*, 3 How. 556, 565, it is said:

These citations are but different illustrations of the rule, that the meaning of the legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed.

In *Virginia v. Tennessee*, 148 U. S. 503, 519, it is said:

And the meaning of a term may be enlarged or restrained by reference to the object of the whole clause in which it is used.

In *United States v. Dickson*, 15 Pet. 151, 165, it was said:

* * * we are led to the general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause

which does not fall fairly within its terms. In short, a *proviso carves special exceptions only out of the enacting clause; and those who set up any such exception, must establish it as being within the words as well as within the reason thereof.* * * *

It was argued in the original brief of the Government that the main purpose of section 184 of the Penal Code was to preserve the Government's monopoly, and to prevent interference with it by evasions of any sort. Carrying out this intent, it is clear that the law would be evaded if letters relating to private business could be carried by the railroads outside the mails merely because they contained some reference, however small, to the railroad company's own current business.

(c) On page 13 of the brief it is argued that the word "current" in the statute is not a limitation upon the word "business," since "current" means merely "daily" or "ordinary." Accepting this as the proper definition of the term, it would seem clear that neither of the letters referred to the "current" business of the railroad company, since it can not be a "daily" or "ordinary" occurrence to call the telegraph operator's attention to the value of day and night letters, or the necessity of his familiarizing himself with the telegraph company's tariffs.

WILLIAM WALLACE, Jr.,
Assistant Attorney General.

DECEMBER, 1914.

UNITED STATES *v.* ERIE RAILROAD COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 552. Argued December 14, 1914.—Decided January 5, 1915.

Quære, whether § 184, Penal Code, prohibiting the carriage of letters or packets otherwise than in the mail by carriers on post routes, except under certain specified conditions, is penal or remedial, or whether it is to have a liberal or strict construction.

Letters of officers of the carrier, a railroad company, to officers of the telegraph company with which it has a contract and in whose business it participates, relating to immediate and day by day action, is current, as distinguished from exceptional, business and falls within the permitted exceptions of § 184, Penal Code.

THE facts, which involve the construction of § 184 of the Penal Code of the United States, prohibiting, except under specified conditions, the carriage of letters and packets otherwise than in the mails, are stated in the opinion.

Mr. Assistant Attorney General Wallace, with whom *The Solicitor General* was on the brief, for the United States:

Section 184 is a revenue statute and should be liberally

construed. *United States v. Bromley*, 12 How. 88; *Johnson v. Railway*, 196 U. S. 17; *United States v. 36 Bbls. Wine*, 7 Blatch. 463; 4 Ops. A. G. 161.

The letters carried were not related to current business of the railroad. In fact neither letter related to the railroad company's business.

The agreement throughout distinguishes between the railroad and the telegraph company's business. *West. Un. Tel. Co. v. Penna. Co.*, 129 Fed. Rep. 867; 21 Ops. A. G. 400.

Section 184 is not essentially penal in its nature, but is rather remedial, its main purpose being to preserve the revenues of the United States, and the great establishment which has been built up under the statutes of the United States for the benefit of the whole people. *United States v. Bromley*, 12 How. 88.

A statute passed for the purpose of protecting the revenues of the United States is not to be strictly construed, even where it provides a severe penalty. *Johnson v. Southern Pacific Co.*, 196 U. S. 1; *United States v. 36 Barrels of Wines*, 7 Blatch. 459, 463; 4 Ops. Att'y Gen'l, 159, 161, 162.

Construing § 184 fairly, these letters did not relate "to current business" of the defendant.

From 1825 on Congress has endeavored to protect the governmental monopoly in the carriage of the mails by prohibiting entirely such carriage by private expresses and prohibiting it generally to private parties except in the cases where the letters related to the articles being conveyed at the same time.

Every word of the statute must be given some meaning; "current" was added as a word of limitation.

Neither of the letters set out in the indictment related to such business. Even if they related to the railroad company's business at all they evidently did not relate to its passing, present business.

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Mr. Rush Taggart for defendant in error:

Both of the letters in question relate to the "current business" of the Erie Railroad Company and there was no violation of Penal Laws, § 184. See § 5263, Rev. Stat.; *Pensacola Tel. Co. v. West. Un. Tel. Co.*, 96 U. S. 1; *West. Un. Tel. Co. v. Massachusetts*, 125 U. S. 530; *United States v. Un. Pac. Ry.*, 160 U. S. 1; *West. Un. Tel. Co. v. Penna. R. R.*, 195 U. S. 540.

Penal Laws, § 184, has not yet received judicial construction. It is practically a reenactment of § 3985, Rev. Stat., in force for a great many years before the codification of the penal laws, which was construed by Attorney General Harmon as intended only to prohibit the transportation of communications between third parties, and that it did not prohibit the transportation of communications, whatever their substance, belonging to the carrier or relating to its business. 21 Ops. Atty. Gen. 394.

As to significance of the word "current" as used in the statute, see *Thomas v. Peoria &c. R. R.*, 36 Fed. Rep. 808, 819; *Taylor v. Mayo*, 110 U. S. 330.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Indictment in two counts against the railroad company for carrying otherwise than in the mails certain letters in violation of § 184 of the Penal Code of the United States. The section is as follows:

"SEC. 184. Whoever, being the owner, driver, conductor, master, or other person having charge of any stagecoach, railway car, steamboat, or conveyance of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current

business of the carrier, or to some article carried at the same time by the same stagecoach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars."

The counts are similar except as to the letter carried. The indictment alleged that the railroad between designated points (Jersey City, N. J., and Montgomery, N. Y.) regularly made trips; that it had made a contract with the Western Union Telegraph Company by which provision was made for a joint operation of telegraph lines over the right of way of the railroad company; that the business was under the supervision of a joint superintendent named E. P. Griffith, and that the telegraph office at Montgomery—both for railroad and commercial business—was in charge of G. A. Osborne, the station agent of the railroad; that on June 27, 1912, the railroad carried otherwise than in the mails the following letter:

"June 27, 1912.

"Mr. G. A. Osborne,

"Agent, Erie Railroad and Manager W. U. T. Co.,

"Montgomery, N. Y.

"Dear Sir: The revenue of the W. U. T. Co.'s receipts at Montgomery, N. Y., would indicate that the new telegraph service, such as day and night letters, had not been thoroughly presented to the people of Montgomery. At many of the Erie Railroad stations similar to Montgomery very handsome increases in telegraph receipts have been shown on account of this new service and as the Erie Railroad participates in the telegraph revenues from its railroad stations it is desired that their revenue from the telegraph company shall increase as well as the revenue from its freight and passenger traffic, and I hope you will do everything to make such showing.

"Yours truly,

"(Sd.) E. P. Griffith,

"Supt. of Telgh."

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The letter upon which the second count is based was as follows:

"Mr. G. A. Osborne,

"June 27, 1912.

"Agent Erie Railroad Co. and Manager W. U. Tel. Co.,
"Montgomery, Orange County, N. Y.

"Dear Sir: I forwarded to you by train mail on June 20th a copy of the new Western Union Telegraph Company's tariff book, which shows a considerable number of changes in telegraph rates, particularly with respect to the old 40-cent rate having been reduced to 30 cents to a considerable number of points, and I would ask that you familiarize yourself with the new rates in order to avoid check errors. The misquoting of rates creates a large number of error sheets and correspondence, and not only confuses the auditing department of the W. U. Tel. Co., but also delays settlements between the Telegraph Company and the Erie Railroad.

"As you are aware, the Erie Railroad receives a percentage of the W. U. Tel. Co.'s telegraph receipts at all Erie railroad stations, where the agent of the railroad, under contract with the telegraph company, also acts as the agent or manager of the telegraph company, and that the handling of Western Union telegrams, in making up of Western Union reports, from which the railroad company's proportion of receipts are figured, and all of the accounting and correspondence relative to Western Union matters are as much the current business of the railroad as handling accounts or reports made in connection with the freight shipments or sale of tickets for the railroad, the railroad company receiving a revenue from all.

"Your attention is specially called to modification of Rule No. 8 for the instructions to all New York State offices only and to be used instead of Rule 8, printed in the tariff book, printed copy of which I enclose herewith.

"Yours truly,

"(Sd.) E. P. Griffith, "Supt. of Telgh."

The indictment was demurred to by the railroad company on the ground that the matters set forth therein were not sufficient in law to constitute a crime. The demurrer was sustained, the court expressing itself to be "clearly of the opinion that the 'current business of the carrier' referred to in section 184 is the kind of business in which it appears from the indictment the carrier was engaged, and that the sending of the letters in question was in accordance with law."

The opinion of the court exhibits the point in the case, to which, though a short one, considerable argument has been addressed by counsel. The solution of it is in the contract between the companies.

It is a very elaborate document, regulating the relations of the railroad and telegraph companies by a variety of provisions and details. By it the railroad company leased to the telegraph company the right to maintain the telegraph line it (the railroad company) then had, and operate the same and the right to build new lines. One wire was to be provided for railroad use and one for commercial use, though joint wires were to be used where nothing more was required.

Article 6 of the agreement is especially relied on by the railroad company. It provides that at all telegraph offices now or hereafter maintained at the stations of the railroad company it shall, at its own expense, furnish office room, light and heat for telegraph service and also at its own expense provide an operator and other employés, who, acting as agents for the telegraph company, shall receive, transmit and deliver, exclusively for the telegraph company, such commercial and public messages as may be offered and shall charge the telegraph company's tariff rates thereon and shall render to the telegraph company monthly accounts thereof, the railroad company to pay all of such receipts to the telegraph or other employés but not to be responsible

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for the failure of its operators to pay over such receipts.

The telegraph company agrees to pay the railroad company as soon as practicable after the close of each month 25% of the cash receipts, at offices in the railroad company's stations or other public buildings, received from commercial or public messages of the telegraph company, with certain exceptions not material to mention, and transmit free telegrams relating to railroad business, the railroad company to carry materials, furnish offices and operators, pay for certain lines, and give exclusive privileges, as far as possible to the telegraph company. The railroad company is given the right to investigate the accounts of the telegraph company so far as they relate to such earnings. Either party may discontinue any of its offices. If the telegraph company removes any of its offices from the railroad company's stations the latter company shall still have the right to continue doing a commercial business in such station, and the telegraph company will provide the usual signs for such business, the railroad company not to solicit business in competition with the telegraph company.

By the twelfth article it is provided that the telegraph lines and wires and the offices and operators in railroad stations shall be under the supervision and control of a competent joint superintendent of telegraph who shall be appointed by the railroad company subject to the approval of the telegraph company and be paid jointly and equally by both companies at a salary to be fixed by both, each company paying one-half thereof. Either company may discharge the joint superintendent, but his successor can only be appointed on the written consent of both parties. By the ninth article it is expressly covenanted and agreed that the joint superintendent and all other persons engaged in the work contemplated by the agreement, by whichever company paid, shall be deemed

to be the servants of the telegraph company except when engaged in the transmission of messages for the railroad company and in certain construction work.

It will be observed that while the companies in many respects are independent they are also, in some respects at least, dependent. The telegraph is a facility of the railroad company and necessary to its operations, the télégraph company doing what the railroad company did for itself before the agreement and but for the agreement with the telegraph company would have to do. The railroad company has an interest in the receipts of the other company and is concerned in their amount and the maintenance and increase of the telegraph business. The control of the telegraph company's instrumentalities and its offices and operators is in a "competent joint superintendent of telegraph," in whose appointment the railroad company has a voice and whom it also may discharge. It is, however, not possible, and keep this opinion within a reasonable length, to detail the many ways in which the two companies are related, and while it may be said that there is a railroad business in which the telegraph company has no concern, that is, business distinctly railroad, yet it is also so far concerned with the telegraph business as to make its efficient and successful operation of interest to it. To promote such operation was the purpose of the two letters which are the basis of the indictment, and the business comes within the description of the statute and is "current."

In reaching this conclusion it is not necessary to consider the character of the statute, whether it be penal or remedial, or whether it is to have a strict or a liberal construction. It is one justified by the words of the statute and in view of the facts by its history, and is not precluded by anything that was said at the time the act was amended. As originally enacted and carried into the Revised Statutes (§ 3985) it forbade the carrying, "other-

wise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, or to some article carried at the same time by the same stage-coach, railway car, or other vehicle."

The section coming before the Attorney General for construction, the opinion was expressed that it only intended to prohibit the transportation of communications between third parties and did not prohibit the transportation of communications, whatever their substance, belonging to the carrier or relating to the carrier's business. 21 Op. Atty. Genl. 394. It is the contention of the Government that when § 184 came to be enacted that construction was narrowed by the use of the word "current," Senator Bacon, who suggested it, in effect so declaring, and urged it as an amendment so that the new section might not relate, as the senator said, to the "financial transactions" of the carriers, "or anything of that kind, but to current business and operations." To this comment counsel for the Government adds the definition of "current" from the dictionaries as "now passing; present in its course; as the current month or year"; and supposes this to be the meaning which was in Senator Bacon's mind and urges the view that "the 'current business' of the carrier, therefore, is that business which is, at any particular time, in the present course of its transactions." But so confined in meaning it is not very clear what enlargement the new section is on the old one. We cannot so confine it. The statute certainly cannot mean that the described business should have no relation to the past and no connection with the future, however near. It may be that there might be a business so completely consummated or so much in speculation that it could not be described as "current," but the letters with which this case is concerned are not of either character. They regard not only immediate but day-by-day action and so

relate to "current," as distinguished from exceptional business.

Judgment affirmed.

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of the case.
